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ISSN 0972-1983

CHARTERED SECRETARY

[Registered under Trade Marks Act, 1999]

Vol. : L ■ No. 7 ■ Pg 1-148 ■ July-2020

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QR Code/Weblink of Chartered Secretary Journal

<https://www.icsi.edu/JournalsBulletins/CharteredSecretary.aspx>



Annual Subscription

'Chartered Secretary' is generally published in the first week of every month. ■ Non-receipt of any issue should be notified within that month. ■ Articles on subjects of interest to company secretaries are welcome. ■ Views expressed by contributors are their own and the Institute does not accept any responsibility. ■ The Institute is not in any way responsible for the result of any action taken on the basis of the advertisements published in the journal. ■ All rights reserved. ■ No part of the journal may be reproduced or copied in any form by any means without the written permission of the Institute. ■ The write ups of this issue are also available on the website of the Institute.

Printed & Published by

The Institute of Company Secretaries of India

'ICSI House', 22, Institutional Area, Lodi Road, New Delhi - 110 003.

Phones : 41504444, 45341000, Grams : 'COMPSEC'

Fax : 91-11-24626727

E-Mail : journal@icsi.edu

Weblink : <http://support.icsi.edu>

Website : <http://www.icsi.edu>

Editor : Ashok Kumar Dixit

Mode of Citation: CSJ (2020)(7)--- (Page No.)



Performance Experts
SAP PRINT
SOLUTIONS PVT. LTD.

Printed at

SAP PRINT SOLUTIONS PVT. LTD.

Plot No. 3 & 30, Sector II, The Vasai Taluka Industrial Co-op.

Estate Ltd., Gauraiapada, Vasai (E), Dist. Palghar - 401 208

www.sapprints.com



“Difficult roads often lead to beautiful destinations.”

Dear Professional Colleagues,

It has been more than 3 months since we began discussing the pandemic, it's spread out at a global level, the scale and the deep impact. Micro-scoping the view to a national level, and all of us have been worrying about the growing numbers and crave for a medicine, the development of a vaccine, apart from the usual instructions to stay safe.

Commencing of the unlocking and easing of the restrictions from the government has paved way for self-restriction, self-regulation with heightened responsibility on every single person to protect ourselves and those close to us. All of us are expected to portray the highest level of professionalism by conducting ourselves in a manner befitting the needs of the present situation.

Irish Poet and Playright, Oscar Wilde once said and I quote, “What seem to us as bitter trials are often blessings in disguise”. The purpose behind mentioning these words is because they seem much befitting to our current scenario. The months of June and July are known for the celebration of a host of events and days at the ICSI. The celebrations are held at a pan-India level through the various Chapters and Regional Offices of ICSI serving as perfect moments of connecting with fellow members, gaining wisdom and knowledge and sharing opportunities of professional enhancement as well as skill upgradation.

While the Pandemic and the lockdown have come across as bitter trials, yet neither can growth and development be

brought to a complete halt nor can celebrations be. It is with this thought, that the ICSI made efforts to celebrate the hallmark days and events in the presence of distinguished dignitaries thus keeping the age old legacy intact.

PCS DAY: RECOGNIZING COMPANY SECRETARIES IN PRACTICE

While the date of 15th June may not hold any prodigious significance for the rest of the world, but for us Governance Professionals, especially the practising brigade, the date has been holding a different connotation for more than last 3 decades for it is on the 15th June 1988, when the Company Secretaries in Practice had been accorded recognition under the Companies Act, 1956. Plenty of recognitions have been accorded to the Company Secretaries in Practice since then and yet this day remains special for all of us.

With the intent of celebrating, gaining further knowledge and insights and paving the way for a better governed India Inc. and the Indian nation all in the presence of esteemed guests from India Inc. and the Regulatory Authorities, the PCS Day was also conducted through Webinar mode online. More than 75,000 members and students participated in the event through various platforms.

And while the day was equally mesmerizing, reminiscing the moments fills my heart with great delight for it was the presence of our distinguished Chief Guest, Shri Anurag Singh Thakur, Hon'ble Minister of State for Finance and Corporate Affairs that made the celebrations all the more enthralling. His

words of appreciation for the entire brigade of Governance Professionals as well as the Institute were a reiteration of the faith of the Regulatory Authorities in us and even more a motivation to work towards the achievement of our vision with greater zeal than ever.

GST DAY: 3 YEARS OF GOOD AND SIMPLE TAX

Akin to the PCS Day celebrations, equally grand was the celebration of GST day at ICSI. It was indeed a matter of great pride to reminisce the efforts and initiatives undertaken since the dawn of this new era in 2017. Apart from releasing guides and publications, expanding the knowledge base, sharing Education Series on a Regular basis, GST Newsletter; the first year of GST had witnessed ICSI creating the world record for the Largest Taxation Lesson. An achievement which will be a part of the pages of the history of ICSI in golden words.

Keeping all these and more in sight, it was indeed rightful that the completion of three years of the Goods and Service Tax was celebrated in the presence of some of the dignitaries who have been closely connected with the journey of this Tax in one way or the other. The presence of Shri Piyush Goyal, Hon'ble Minister of Railways and Commerce & Industry, and Shri Sushil Kumar Modi, Hon'ble Deputy Chief Minister of Bihar and Member, GST Council indeed lent grace and strength to the celebration.

ICSI WEBINARS: THINKING OUT OF THE BOX

Days from mid March 2020 were seemingly grim given the global scenarios, yet those were made cherishable and memorable by the presence of experts and dignitaries from all fields, from all walks of life. If the month gone by was to be discussed, the celebration of the International Day of Yoga, 2020 in the presence of both national and international guests, rendered awe to the entire month. Bifurcated into two segments; it indeed was a hearty delight to have amongst us, Dr. Pamela Smith from USA, Dr. Shabnam Das Kar and Dr. Namrata Bagaria from Canada to deliberate upon the various aspects of Wellness & Immunity in the first hour, followed by live Yoga session administered by renowned Yoga Trainer, CS Sudhir Jain in the presence of Shri Gopal Krishna Agrawal, Former Council Member (Govt. Nominee), ICSI, Shri Anil Gupta, Council Member (Govt. Nominee), ICSI, and Prof. (Dr.) Tanuja Manoj Nesari, Director, The All India Institute of Ayurveda.

And if that did not seem sufficient to get back to our roots, the scintillating and enriching session on and the deliberations held therein with Shri Om Birla, Hon'ble Speaker, Lok Sabha on the Governance: From Grassroot to Global added further dimensions to road ahead for National and International Governance. Very recently we also had the honour of having amongst us, Shri Avdheshanand Giri Ji Maharaj to guide us and help us in sailing through these times of turbulence by according us tips of life management.

ICSI INITIATIVES

As you are aware, the Institute has forever been on a lookout for new ways and means of knowledge enhancement of its members. In one such attempt, we have released the revamped, refurbished and renewed version of the "Info Capsule". The idea is to capture the daily updates from all the important areas of professional interest under one roof and share it with our members for easy access and usability. Furthermore, keeping the factor of easy access in sight and realizing the need for a dedicated software to aid in compliance, the ICSI has collaborated with Complinty to provide a platform to the practising professionals for managing their practice operations.

Given the gravity of situation at hand facing the Indian scenario, the ICSI has rolled out a host of relaxations and initiatives for its students as well. While on one hand the dates of the CS June, 2020 Examinations have been postponed to be held in August, free online classes have been rolled out for CSEET Students. The online window for change of Centre, Medium, module was also reopened and facility has been provided to the students for carrying forward their exam fee from June 2020 exam session to December 2020 exam session.

The Institute has also relaxed the last date of submission of the first quarterly report and it has been notified that the lock down period shall be treated as continuity of practical training for the CS trainees. Simultaneously, 15 days e-Academic programme including 08 days e-EDP (3 Days e-Governance and 05 Days Skill Development Programme) and 05 Days Online Professional Skill Development Training (PSDT) for CS Trainees and Aspirants are also being organized.

MSMEs AND ROLE OF PROFESSIONALS IN SELF-RELIANT INDIA

As the old proverb goes "Little by little, little becomes a lot"; the same seems to be the thought of the Hon'ble Prime Minister when he set in motion reforms for MSMEs under the Aatmanirbhar Bharat project. We all, both as individual Governance Professionals and together as an Institute have always committed ourselves to stand shoulder to shoulder with the Government and Regulatory Authorities and contribute ourselves wholeheartedly with all the hopes and aspirations pinned on us.

We, as always, make ourselves, committed for our roles and responsibilities that we are expected to dispense with in the upcoming journey of a New India.

"Together we can. Together we will."

Happy Reading !!!

Yours Sincerely



CS Ashish Garg
President, ICSI

INITIATIVES UNDERTAKEN DURING THE MONTH OF JUNE, 2020

INITIATIVES FOR MEMBERS

WEBINARS CONDUCTED DURING JUNE, 2020

Webinars were conducted during the month of June, 2020 on varied topics of professional interest for the holistic development of our members, students and other stakeholders:

- World Environment Day: Time for Nature
- MSMEs: The New Age Catalyst for Indian Economy
- Youth for Nation Building
- Cyber Security Threats & Challenges
- Ordinary Faces, Extra Ordinary Work: Making difference in people's life
- IT Empowerment for Corporate Leader
- International Day of Yoga: Wellness & Immunity
- Governance from Grassroot to Global

REPRESENTATIONS SUBMITTED DURING JUNE, 2020

During the month of June, 2020, the following suggestions, views and representations were submitted to various Regulatory Authorities:

- Request for bringing a scheme for filing of MGT-14 in line with the scheme for relaxation of time for filing forms related to creation or modification of charges under the Companies Act, 2013.
- Request for extension of period of relaxations of various compliances under the Companies Act, 2013.
- Views and suggestions of the ICSI on Draft Electricity (Amendment) Bill, 2020 have been submitted to Ministry of Power on June 4, 2020 including the suggestion to recognize Company Secretaries in the relevant clauses of the Bill.
- Request for relaxation from compliance with the Regulation 24A read with circular No CIR/CFD/CMD1/27/2019 dated February 8, 2019 relating to Secretarial Compliance Report due to the COVID-19 pandemic had been submitted to SEBI on June 24, 2020. Relaxation has been granted by SEBI and the date of filing of ASC Report for the year 2019-20 has been further extended from June 30, 2020 to July 31, 2020.

3 DAYS ONLINE WORKSHOP ON SECURITIES LAWS & CAPITAL MARKETS

The Institute organized a 3 Days Online Workshop on Securities Laws & Capital Markets during June 5-7, 2020. Hon'ble Mr. Justice Jog Singh, Former Judicial Member, SAT was the Chief Guest at the Inaugural Session. Aspects pertaining to Capital Markets, SEBI (LODR) Regulations, SEBI Act, 1992, Governance challenges, Insider Trading, etc. were deliberated.

ICSI PCS DAY-2020

The celebrations of ICSI PCS Day were conducted through day-long deliberations with dignitaries from the Government and India Inc. on June 15, 2020. The Inaugural Ceremony was presided over by Shri Anurag Singh Thakur, Hon'ble Minister of State for Finance and Corporate Affairs and his address instilled amongst the members a new zeal to serve the nation.

PROGRAMME FOR FAMILIARIZATION OF INDEPENDENT DIRECTORS

The MCA & IICA launched the Independent Directors databank under the Companies Act, 2013 with an aim to strengthen the institution of Independent Directors. Keeping in view the role of IDs in strengthening the governance structure of India Inc., the ICSI in joint collaboration with IICA conducted a Programme for Familiarization of Independent Directors. The 3 hour Online Course was held on 20th June, 2020 covering aspects pertaining to the Due Diligence entailing in Becoming and Independent Director and Code of Conduct and Liabilities for Independent Directors.

INITIATIVES FOR STUDENTS

COMMENCEMENT OF FREE ONLINE CLASSES FOR CSEET REGISTERED STUDENTS

ICSI has rolled out free CSEET online classes for all students registered for CSEET. Online classes are being taken by renowned faculties with enriched experience. On the similar lines various Regional/Chapter offices of the Institute also commenced classes. The videos of the online classes are also being uploaded simultaneously at youtube channel of ICSI for the benefit of students at large.

RE-OPENING OF ONLINE WINDOW FOR CHANGE OF CENTRE, MEDIUM, MODULE

In view of various requests received from the students, it has been decided to Re-Open the online window from 17th June

to 30th June 2020 for change of centre, medium, module. Students are advised to make use of this opportunity.

COMMENCEMENT OF ONLINE CLASSES BY VARIOUS REGIONAL/CHAPTER OFFICES FOR DECEMBER 2020 EXAMINATIONS

The ongoing pandemic has affected the physical mode of interaction with the students. To prepare our students for exams, many Regional/Chapter offices have announced online classes for December 2020 session of examination. Students may enroll for the online classes if they wish to appear in December 2020 examination.

CARRYING FORWARD OF EXAM FEE FROM JUNE 2020 EXAM SESSION TO DECEMBER 2020 EXAM SESSION

In its endeavour to support and facilitate the students, Institute is providing facility to the students for carrying forward their exam fee from June 2020 exam session to Dec 2020 exam session.

PARTICIPATION OF ICSI IN VIRTUAL EDUCATION EXPO

ICSI recently participated in virtual Education Expo organized by Times of India from 11th June to 19th June 2020. The main objective of participation was to create awareness amongst the students about the Institute and to sensitize students regarding the recent changes like introduction of CSEET Test etc. ICSI also participated in one more virtual Education Expo being organised by Hindustan Times from 22nd June to 6th July 2020.

ALLOWING STUDENTS ONE MORE ATTEMPT UNDER OLD SYLLABUS

The Institute has decided that the students of Executive and Professional Programme (2012 old syllabus) shall be allowed one more attempt during the December, 2020 session of examination.

All students (under 2012 old syllabus) may note that they shall be compulsorily switched over to 2017 new syllabus from June 2021 session onwards.

E-MSOP FOR ALL ELIGIBLE STUDENTS BY RELAXING CRITERION OF TWO YEARS' TIME BAR AFTER PASSING PROFESSIONAL EXAMINATIONS

The Institute vide circular dated 31.03.2020 had relaxed the eligibility criteria for taking admission in e-MSOP by temporarily removing the two years' time bar between professional pass and e-MSOP registration, so that all professional pass students irrespective of their year of

passing in professional examination may avail the facility of e-MSOP subject to fulfillment of other conditions as mentioned in the guidelines till 30th June, 2020. However, a new circular dated 19th June, 2020 further extends this timeline to 30th September, 2020. This has been done to facilitate the students to apply for membership without waiting for the classroom based MSOP in regions and chapters.

RELAXATION IN SUBMITTING FIRST QUARTERLY REPORT OF TRAINEES IN THE INSTITUTE'S RECORD DURING THE PERIOD OF LOCK DOWN

The Institute had relaxed the last date of submission of the first quarterly report vide circular dated 17th April, 2020. Keeping in view, the lockdown, the Institute had decided to extend the last date of submission of the first quarterly report of the trainees which is 30th April to 30th June 2020 except the students completing their practical training during the period of Lock down.

This provision has further been extended till 30th September, 2020 via circular dated 19th June, 2020. Now the trainers may submit the first quarterly report and second quarterly report of their trainees till 30th September, 2020.

TREATING THE LOCK DOWN PERIOD ON ACCOUNT OF COVID-19 AS CONTINUITY OF PRACTICAL TRAINING FOR THE CS TRAINEES

The outbreak of Global Pandemic ("COVID 19") has resulted in lock down, hence, the Institute has allowed the Trainers / employers (Companies, PCS and other entities) to facilitate the CS trainees registered with them and undergoing their Practical training, to work from Home under the direction and monitoring of their trainers (online/e electronic mode).

In view of the above, the working from home during the lock down period (including extension thereof if any by the government) shall be counted for the purpose of training period.

RELAXATION FOR COMPLYING WITH THE REQUIREMENT OF PRE EXAMINATION TEST AND ONE DAY ORIENTATION PROGRAMME FOR ENROLMENT TO JUNE 2020 SESSION

The students who have enrolled in the June 2020 Examination (postponed), but could not complete their mandatory One day orientation Program, were given opportunity to complete their orientation program initially upto 31st May 2020 and now it has been extended till 31st August 2020.

15 DAYS E- ACADEMIC PROGRAMME INCLUDING 08 DAYS E-EDP (3 DAYS E-GOVERNANCE AND 05 DAYS SKILL DEVELOPMENT PROGRAMME)

Due to the lockdown on account of COVID-19, all the short term trainings organized by the ROs and Chapters in classroom mode were discontinued. In view thereof, many students were not able to complete their 15 days academic program and EDP programme. In order to provide the best possible services to the students during the period of lock down, the Directorate of Training had organized 1st Batch of 15 days e Academic Programme including 08 days e-EDP (3 Days e- Governance and 05 days Skill Development Programme) from 17th April, 2020 to 19th May, 2020. Further, the 2nd batch of 15 days e- Academic Programme has been launched by the Institute starting from 25th June, 2020 to 31st July, 2020.

05 DAYS ONLINE PROFESSIONAL SKILL DEVELOPMENT TRAINING (PSDT) FOR CS TRAINEES AND ASPIRANTS

In order to build confidence among our trainees by enhancing their skill set, and also to develop their functional competency in core and emerging areas, the Institute had conducted 05 days online PSDT for the CS trainees from 2nd June to 6th June 2020. The objective of such training was the capacity building of CS trainees, enhancing their soft skills, IT Skills and drafting skills etc. Total 710 students had successfully participated in the programme in the first batch. The institute is planning to organize the second batch of PSDT soon.

STUDENT COMPANY SECRETARY AND CS FOUNDATION E-BULLETIN

The Student Company Secretary e-journal for Executive/ Professional programme students of ICSI and CS Foundation course e-journal for Foundation programme students of ICSI have been released for the month of June, 2020. The journal is available on the Academic corner of the Institute's website at the link: <https://www.icsi.edu/e-journals/>

CSEET E-BULLETIN

The June issue of the CSEET e-bulletin covering the latest update on the subject on the CSEET is also placed on the ICSI Website. The same is available on the Academic corner of the Institute's website at the link: <https://www.icsi.edu/e-journals/>

ICSI INITIATIVES TOWARDS GST

Initiated from April, 2017, 35 issues of the GST Newsletter have been published in so far, with June, 2020 issue being the latest.

IT INITIATIVES

- Online Training fees Reconciliation has been done in STIMULATE portal for ICICI Bank.
- MIS reports have been developed under stimulate portal for ICICI and BillDesk Payment gateways.
- Online registration portal has been developed for CCGRT to invite short term training registrations with Online Payment Gateway facility.
- Online registration for Short term training services have been developed for NIRC with Payment Gateway services.
- CSR awards portal has been developed and moved to UATs server to test the registration of companies.
- Development of Utility to fetch the student registration data to integrate with e-learning portal.
- Integration process has been developed under SMASH portal for inactive students to active and synch to STIMULATE portal.
- Development of the StartUp Portal.
- Functionality of StartUp Ki Baat and StartUp Dost Schemes has been completed.

CONGRATULATIONS!!!



The ICSI congratulates **Shri Injeti Srinivas** on his appointment as chairman of the International Financial Services Centres Authority (IFSCA) by the Appointments Committee of the Cabinet, DoPT.

During his tenure as Secretary, MCA, Shri Injeti Srinivas had played a pivotal role in pursuing the government's objective of improving the ease of doing business by pushing through significant reforms in the Companies Act, 2013 and the Insolvency and Bankruptcy Code (IBC).

In recognition of his commitment towards enhancing the governance culture in India Inc., the Institute of Company Secretaries of India had conferred Honorary Fellow Membership of the Institute upon Shri Injeti Srinivas at its 51st Foundation Day held on 5th October, 2019.

We wish him all success in his future roles and endeavours.



INTERNATIONAL DAY OF YOGA 2020 CELEBRATIONS

On SUNDAY, 21st JUNE, 2020

WELLNESS & IMMUNITY

SPEAKERS



G HAR G HAR ME YOG

SPEAKERS



Glimpses of ICSI Webinars

WEBINAR ON

GOVERNANCE FROM GRASSROOT TO GLOBAL ON
27th JUNE, 2020

Addressed by:

Shri Om Birla, Hon'ble Speaker, Lok Sabha
Prof. Ramesh Arora, Chairman, Management Development Academy
CS (Dr.) Shyam Agrawal, Chairman, ICSI RVO



WEBINAR ON

ORDINARY FACES, EXTRA ORDINARY WORK: MAKING
DIFFERENCE IN PEOPLES'S LIFE ON 16th JUNE, 2020

Addressed by:

Padma Shri Dr. Prakash Amte & Dr. Mandakini Amte
Magsaysay Awardee, Social Worker and Founder Lok Biradari Prakalp



Glimpses of ICSI Webinars

WEBINAR ON

“LIFE MANAGEMENT SKILLS FOR SUCCESS”
ON 3rd JULY, 2020

Addressed by:

Swami Avdheshanand Giri Ji Maharaj, Acharya Mahamandaleshwar of the Juna Akhara
Smt. Malini Laxman Singh Gaur, Former Mayor of Indore and Member of Legislative Assembly, MP



WEBINAR ON

OPPORTUNITIES FOR CS IN GST ON 04th JULY, 2020

Addressed by:

CS Ashish Garg, President, ICSI
CS (Dr.) Shyam Agrawal, Chairman, ICSI RVO





GST DAY CELEBRATIONS 2020 HELD ON 1ST JULY, 2020

To commemorate the third anniversary of the introduction of the **Goods and Services Tax**, a mega programme was organised on 1st July 2020 through live webinar mode. Shri Piyush Goyal, Hon'ble Minister of Railways and Commerce and Industry presided over as the Chief Guest at the Inaugural Session. A special interactive session with Shri Sushil Kumar Modi, Hon'ble Deputy Chief Minister of Bihar along with President, Vice-President and other Council Members, ICSI was also organised on the occasion.

A video on "ICSI unlocking the opportunities in the Lockdown" was also released during the Inaugural Session along with the GST Newsletter and Info Capsule.

INAUGURAL SESSION

CS Deepak Khaitan, Council Member and Chairman, PCS Committee, ICSI briefed about the series of events for the day and welcomed the guests for the day which was followed by a brief introduction of the Chief Guest by CS Nagendra D. Rao, Vice President, ICSI.

CS Ashish Garg, President, ICSI informed the participants that the Institute has been taking several initiatives since the introduction of GST in the year 2017 and constantly representing before the Government seeking recognitions for the Company Secretaries in the GST domain. He also apprised that the Institute has been bringing out various publications on GST and issues Educational series and monthly Newsletter and that ICSI also has the distinction of holding the largest GST taxation class at Jaipur, which is an unchallenged Guinness World Record till date.



Shri Piyush Goyal, Hon'ble Minister of Railways and Commerce and Industry extended his wishes on GST Day while paying homage to Late Shri Arun Jaitley, the architect of GST and hailed the contribution of ICSI in disseminating GST laws and framework to all stakeholders. He said that Company Secretaries have moved from their traditional role to much bigger role towards providing advisory and compliance services to companies and Company Secretaries have come to be known as Corporate Secretary.

He further said that the government is making significant efforts to bring changes in terms of integrity and how the businesses work for promoting EODB and improving lives of Indians by making India a US \$5 Trillion economy by 2025 and US \$10 Trillion economy by 2030. He also said that Professionals have a big role to play in Atmanirbhar Bharat mission and that we all should use Indian goods to infuse demand for Indian goods leading to capacity building of Indian industry and reduction in production cost.

SPECIAL INTERACTIVE SESSION



Shri Vijay Kumar Jhalani, Former Council Member (Govt. Nominee), ICSI, while introducing Shri Sushil Kumar Modi said that ICSI is the only professional body among the three sister bodies which is celebrating GST Day. He hailed the contribution made by Shri Sushil Kumar Modi alongside Jaitley Ji in the introduction of GST in 2017. He urged upon Shri Modi to pursue allowing conduct of GST Audit by Company Secretaries.

Shri Sushil Kumar Modi, Deputy Chief Minister of Bihar congratulated ICSI for celebrating GST Day. He said GST is a result of determination and efforts of consensus builder late Arun Jaitley. GST subsumed multiple taxes and duties and its introduction was a Herculean task. GST has led to formalisation of tax regime, curbing of corruption. GSTN is the largest network in the world. He urged Company Secretaries to suggest measures to come out of the situation that is posed by pandemic which has led to decline in GST collections.

CS Vineet K. Chaudhary, Council Member ICSI, while conveying vote of thanks said that GST Council has made tremendous effort in implementation of GST. He thanked the Hon'ble Ministers and other distinguished panellists for sparing their valuable time and sharing their views on GST Day.

TECHNICAL SESSION-1: "GST- THE WAY FORWARD"



Moderator and Vote of Thanks: CS Manish Gupta, Council Member, ICSI

Panellists: Mr. Prakash Kumar, CEO of GSTN, CS Bimal Jain, Executive Director, A2Z Taxcorp LLP and CS Vikas Khare, Former Vice President, ICSI.

CS Ashish Garg, President released the GST Newsletter-June, 2020 issue and also released the Info Capsule.

Mr. Prakash Kumar in his address deliberated upon the GST statistics in recent years. He also informed the participants about SMS based filing of NIL GSTR-3B return and SMS based filing of NIL GSTR-1 return.

CS Bimal Jain spoke about issues like taxable event in the GST, subjective nature of the same and dependability on individual to individual. He opined that TRAN-1 should have been filed by 27th December, 2017 but till now so many litigations/cases are pending in the Court regarding this.

TECHNICAL SESSION-2: "PERTINENT ISSUES AND PROFESSIONAL OPPORTUNITIES IN GST"



Moderator: CS Praveen Soni, Council Member, ICSI

Panellists: CS V S Datey, Renowned author of Indirect Tax Laws, CS Shubham Khaitan, Partner - S. Khaitan & Associates, CS Udit Jalan, Founder & CEO - File IT India & CFO- Taaza TV, CA Gagan Kedia, Managing Partner-MRG Kedia & Co.

Vote of Thanks: CS Chetan Patel, Council Member, ICSI

CS Udit Jalan rephrasing the statement of Mr. Piyush Goyal in his own words, observed that it is important to have more equipped professionals to ensure compliance of various statutes and thus help in achieving the difficult tasks.

CS V S Datey highlighted the issue of "Applicability of GST on sale of developed land". The panellists deliberated in detail about the issue of filing the returns, and other related aspects.

TECHNICAL SESSION-3: "CONTEMPORARY ISSUES IN WRIT JURISDICTION IN GST"



Moderator and Vote of Thanks: CS B. Narasimhan, Council Member, ICSI

Speaker: Mr. Vinay Shraff, Advocate, High Court & Supreme Court

Mr. Shraff made a brief presentation on kinds of remedies writ court offers; issues in Transitional Credit; Judgements on some important issues; Contemporary and/or contentious issues in GST which can be addressed through writ petition before High Courts.



THE INSTITUTE OF
Company Secretaries of India

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

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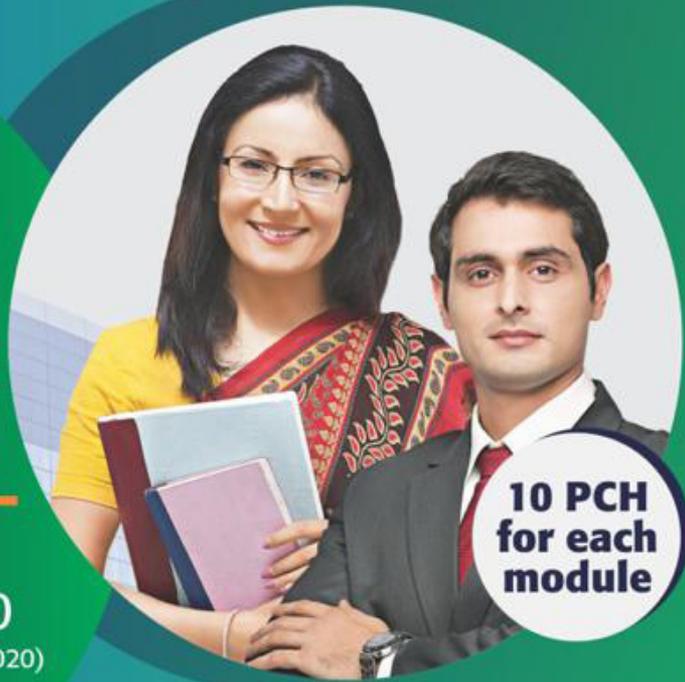
ICSI Continuing Professional Education Self Assessment Modules

Last date extended upto
30th September, 2020

(Registration closes on 15th September, 2020)

Fees: Rs.1000 + GST

per module subject to a maximum
of two attempts per registration



Company Law



Tax Laws



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Governance,
Risk Management,
Compliances
and Ethics



Secretarial Audit,
Compliance
Management and
Due Diligence



Corporate
Restructuring,
Insolvency,
Liquidation
& Winding-up

In continuing with its efforts towards Continuing Professional Education of the Members, the Institute has introduced a series of **Online Self Assessment Modules** on areas of expertise for the members. Such self assessment modules may be attempted by the members at their convenience from the comfort of their offices / homes.

The PCH for each qualified module shall be granted for the block year 2017-2020.

Duration:
1 hour per
module

**Mode of self
Assessment:**
Online

- Members shall be eligible for grant of **10 PCH for each module** qualified.
- Each module shall carry 60 multiple choice questions.
- Minimum qualifying marks shall be 50%.
- There shall be no negative marking.
- Candidates who have cleared any module shall not be permitted to reappear for the same module.

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Call for Articles

Call for Articles for publication in Chartered Secretary – August, 2020

We are pleased to inform that the August, 2020 issue of Chartered Secretary will be devoted to the theme “**Futuristic Governance: From Grassroot to Global**”.

Governance and even more good governance cannot be confined to the corporates solely. Rather, for an economy to function smoothly, it is imperative that principles of good governance are intertwined into all the facets and machineries of that economy; be it law making, institution building, regulation and administration, so on and so forth.

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Keeping the above and the overall need and impact of good governance in sight, the ICSI is dedicating the August edition to “**Futuristic Governance: From Grassroot to Global**”. Articles are solicited from scholarly authors on:

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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.
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SEBI Measures for Small and Medium Enterprises

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Pradeep Ramakrishnan and Appalachari.A

The Small and Medium Enterprises (SME) sector has emerged as a highly vibrant and dynamic sector of the Indian economy over the past five decades and they play a significant role in nation's development. In order to promote the SME sector, the Government of India has taken various steps. Securities and Exchange Board of India (SEBI) as the regulator of securities market has taken a number of steps, including providing a separate and distinct regulatory framework for issue of capital by enterprises in the SME sector. The authors have in this article highlighted the benefits of listing of specified securities on the SME platform for the issuers and the investors. The regulatory framework provides for certain relaxations for the entities listed on the SME exchange from the stringent compliances which an entity listed on the Main Board would have to comply. The authors have concluded that there is a good potential for fundamentally good companies in the SME sector to grow significantly and these companies can play a significant role in boosting India's GDP.

Voluntary Secretarial Audit and MSMEs – A gainful practice

29

Jayan K and Lekha Ashok

In this article, the authors have examined whether companies in the MSME sector would find it useful to go in for a voluntary secretarial audit. The MSMEs have their respective strengths and skill sets in the main area of their business, but they lack an ecosystem which would help them flourish and thrive, rather than just survive. While dwelling upon voluntary secretarial audit, the article explains and highlights the glaring need to have in place a process or mechanism which will help this sector overcome its limitations and consequently achieve their full potential. In the concluding paragraph, the authors have opined that in so far as the professionals in the CS fraternity are concerned, this would be a modified area of practice with lesser focus on the letter of the law and its compliance and greater thrust on systems, procedures, controls and of course the spirit of governance.

Factoring in India Vs. China: Decoding the Manufacturing and Trade Financing Success and Opportunities for MSME Sector in India

33

Peter Mulroy and Santosh Parashar

The adversity caused by COVID-19 has hit trade-volumes and receivables management of corporates including the MSME Sector in India. The strategic need of the hour is to enable and empower the organizations to restore, sustain and continue operations to their previous position. Factoring can significantly enhance the supply of credit liquidity and can build confidence of manufacturers and traders in India, but lack of knowhow at all levels is the biggest barrier. Beyond policy and provisions of

loans or subsidies extended by the Government, the education related to Factoring Products and services is key for MSME to fight with pandemic effect as well international competition in manufacturing, trade and export. This article analyses the extent of usage, gaps and scope of domestic and international factoring for businesses, manufacturers, traders and exporters in India, presents a review of comparative study of secondary data of factoring between India Vs. China and concludes with suggestions in support of findings. It also highlights the needs of improving knowhow of SMEs for providing liquidity to their organization by factoring houses. This would also help them to build internal financing capabilities, grow to a high level and contribute towards much needed manufacturing surplus for exports and making India a manufacturing hub.

Financing MSMEs for self-reliant India

37

Abhirup Ghosh

Micro, small and medium enterprises are a crucial element for a self-reliant India; not only because it contributes almost 30% of the GDP, but also for its ability to create jobs, replace imports and the entrepreneurial opportunities they offer. The Government of India is also relying heavily on MSMEs to bring out the economy from the clutches of depression caused by the disruptions due to COVID-19. This is clear from the plethora of reforms made, through the Financial Stimulus Package, towards revival of MSMEs. All this while, MSMEs have been relying mostly on informal sources of funding for meeting their demands, however, with so many recent reforms, only to ease the flow of funds to MSMEs from formal channels, there is a likelihood that many of them will now turn towards formal channels. However, the Government's eagerness to promote MSMEs is not new – ease of funding for MSMEs has always been on the cards. The formation of SIDBI – a financial institution dedicated to MSME financing, promotion of TReDS, interest subvention schemes etc. are all results of Government's interest in the segment. This Article tries to bring together, the various sources of financing for MSMEs, their pros and cons and the initiatives taken by the Government for facilitating easy access to finance for the MSMEs.

Nursing MSMEs - The growth engine of India

42

Vivek Thakur

COVID -19 pandemic has spared no sector in this globe, then why would Indian Micro Small and Medium Enterprises ("MSMEs") be an exception? This article, while discussing on the repercussions brought in by COVID-19 to the MSMEs and the initiatives taken by the Government and Reserve Bank of India to surmount it, has also tried to throw light on the role played by MSMEs in the economy, pre-COVID challenges haunting the said sector, existing regulatory framework within which they function and suggestions to make them immune, to the extent possible, from such rude shocks in future.

MSME Sector: Government Initiatives and Recent Changes

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Omprakash Bagdia

Micro Small and Medium Enterprises (MSMEs) play a major role in the development of Indian economy in terms of GDP, employment generation as also forex earnings. However

due to their fragmentation and spread across both urban and rural areas of the country, MSMEs are not well organised and their individual contribution is not recognised. The Government has been taking a number of steps through campaigns such as “Make in India”, “Vocal for Local” and now recently Atmanirbhar Bharat in the wake of COVID-19. The Government has also amended the criteria for “Micro, Small and Medium” in the framework of Micro, Small and Medium Enterprise Act, 2006 with effect from July 01, 2020, in response to long pending demands from MSME associations. Under the new definition, distinction between service and manufacturing is eliminated. The article concludes by reiterating the need for continuous facilitation and support from the Government for the sustained growth of MSMEs in India

SME Capital Market - Strengthening MSME Ecosystem and Funnelling Growth

52

Mahavir Lunawat and Nidhi Bohra

In contrast to various apprehensions about the size and nature of MSME businesses, they are poised to grow at lightspeed. Defying all odds, MSMEs have proved that factors driving success are entrepreneurial mind-set, innovation, customer experience and delivery and not the size of the operation. Even smaller companies can explore listing on stock exchanges. It is appropriate to state that, it is the business which matters and not the size. Even a small unit can explore tapping capital markets, provided it has good business model with growth potential. As companies listed on SME platform mature, investor base gets broadened. SMEs, typically, could be perceived as high-risk high return opportunity. However, a properly evaluated SME business could turn out to be a rare opportunity especially because of thin capital base and emerging business scale. One can take advantage of the opportunity available and become part of multi-baggers story. This article highlights Capital Market opportunities and Government measures implemented to boost liquidity for MSMEs.

MSMEs - Substantial Change in Criteria and the need to address certain issues

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Dr. V Balachandran and Dr. K S Ravichandran

The contribution of MSMEs to the GDP of the country and employment and exports generated by MSMEs in the country bear ample testimony to the assertion that the MSMEs make a significant contribution to the economy of the country. It is essential to note that the numbers we have today are based on the earlier criteria. With the increased thresholds, one can understand how substantially the numbers would go up when we see numbers after accounting the effect of increased thresholds. Recent initiative of the Government of India to provide Government Guaranteed Emergency Credit line is a step in the right direction, though it may not be sufficient. In order to ensure that MSMEs operate in a viable manner, three most important requirements are (a) making available working capital at a rate which is slightly higher than the Bank Rate; (b) reducing income tax rates to the level of 10% to 15% and reducing overall compliance burden; and (c) formation of clusters with minimum guaranteed infrastructure so that

there is cost sharing; skill building; training and development; sharing of market information and global developments; brand building and cooperative culture sets in. The author states that post COVID19, MSMEs are going to contribute phenomenally to India's GDP.

SME Exchange – The Alternative fund-raising platform for the Small and Medium Enterprises

63

Rachana Bhusari

Despite the tremendous growth opportunities for the SMEs in India, they face numerous challenges; the biggest challenge being faced by these enterprises is access to capital. The BSE and the NSE launched their platform for small and medium enterprises to raise funds and list on the SME Platform and later migrate to the main board of the BSE and NSE. NSE SME platform EMERGE was launched in 2012 as a new source for SME public offerings and provide listing opportunities to the SMEs with easier eligibility norms. For the SMEs to raise funds from the public in the capital market, NSE is facilitating by creating an enabling environment for Entrepreneurs. Post COVID-19, India could be the brightest spot among the emerging economies when it comes to attracting FDI. “Make in India” will become a success provided the opportunities presented are converted into realities on merit. The article concludes by stating that if right steps are taken to make SME platform attractive for approaching capital markets, it is a much more viable option for raising equity capital in an efficient manner and scale up the businesses to compete globally.

Micro, Small & Medium Enterprises – The Way Forward

67

V. Namita

MSME's play a major role in accelerating the economic growth of the country. This sector contributes around 8% of the GDP. These industries not only provide support to large industries but also generate employment for a large number of people. Hence, MSMEs act as catalysts of economic growth. Keeping the importance of MSMEs in mind, the Government has been coming up with a number of initiatives at regular intervals aimed at promoting this sector. Though MSMEs provide many advantages, they face certain hurdles too. Liquidity is a major concern for this sector and now it's even more so as we are in the brink of a crisis. The whole world is facing a pandemic; most of the countries including India have resorted to lockdown to avert the ensuing ill-effects. Due to the lockdown, the economy has been hit and all the sectors have taken a beating. MSMEs happen to be the worst affected. Considering the significant role, they play in the economy, the Government launched a series of measures to put a fresh lease of life into the MSMEs. These measures include making loans easily available for MSMEs, changing the way MSMEs are defined, and provision of equity. This article analyses the steps taken by the Government, the challenges faced by the MSMEs and what lies ahead for the sector. The role of the regulator in strengthening the sector is also analysed.

Understanding the Emergency Credit Line Guarantee Scheme

72

Raina Bhansali

The ongoing pandemic due to the novel coronavirus and the consequent lockdown has led to an unprecedented situation across the world, affecting almost all the economies of the world. The Governments and the Central Bank of each country has provided relief packages to mitigate the undue stress caused. In India, the Government of India and the Reserve Bank of India has provided various measures/reforms across various stakeholders and different sectors, including for Micro, Small and Medium Enterprises (MSME). One of the key reforms for the MSMEs is the Rs. 3 lakh crore collateral free automatic loans in the form of credit guarantee known as the Emergency Credit Line Guarantee Scheme (ECLGS). The article provides an understanding of the ECLGS, its importance and benefits to the Eligible Borrowers, Member Lending Institutions and towards reviving the economy of India as also suggestions for its successful implementation.

Recovery of the Dues of Micro and Small Enterprises

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Dr. M. Govindarajan

The Micro and Small Enterprises (MSEs) have been accepted as the engine of economic growth and equitable development in both developed and developing countries. The Central Government recently reclassified MSMEs on the basis of the Report of the Advisory Committee and enhanced the threshold limit. The Company Secretary can contribute more for the development of MSMEs. There is time limit fixed for the payment of dues by the buyer and also interest in case of delayed payments. The Central Government paved the way for the composition of Micro and Small Enterprises Facilitation Centers in all States. In this article the procedure of recovery of dues of MSEs through these facilitation centers and the role of Practising Company Secretaries in this regard is analysed.

SME & Start-up platform of Stock Exchanges –Great opportunity for entrepreneurs

81

Ajay Thakur

Continued good health of SME sector will contribute in a big way towards financial inclusion which is one of the significant goals of this government. The SME platform of BSE has made rapid strides, ever since its launch in March 2012. The relaxed guidelines for listing on the SME platform in comparison to the Main Board and the flexibility to shift to the Main Board after listing on the SME platform has attracted quite a few entities to the BSE SME platform. The article touches upon the applicable guidelines for SME listing and the benefits of listing on the SME platform. In addition to the SME platform, BSE has also started the Start-Up platform. Since inception, five start-ups have got themselves listed on this platform. The article concludes by stating that in the times to come the listed SMEs will become globally competitive and offer significant contribution to India's economic development and job creation..

Recent Reforms for MSMEs in India amidst COVID-19 Pandemic

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Dr.K.Malik Ali and Dr.M.Ayisha Millath

The Micro, Small and Medium Enterprises (MSMEs) generates nearly 80 million jobs, having a network of 36 million units and manufactures more than 6000 products. Due to continuous lockdown throughout the world, it is a scary environment to do business. In order to overcome this crisis, the government has announced many lucrative schemes for MSMEs directly as well as through the banks. This article is an attempt to focus on the present status of MSMEs in India and post COVID-19 scenarios. Through schemes like Credit Guarantee Fund Trust for Micro and Small Enterprises (CGTMSE), Aatma Nirbhar Bharat Abhiyan etc., the government has initiated reforms to bring liquidity by providing collateral free loans for the cash crunched MSMEs during the national lockdown. By the introduction of CHAMPIONS portal and MSME Sambandh portals, the government has started moving towards a more transparent and easy mechanism to cater to MSMEs. The article concludes with a prayer for the beginning of the days when they can see gradually improving light coming as it would after the end of a long winding tunnel.

“Procrastination is the Thief of Time” - In the context of Section 124(6) of The Companies Act, 2013

91

M. Sricharan Rangarajan

In accordance with the legal position as it stands today, in essence if a shareholder does not claim his dividend within the time period specified, his shares along with his dividend gets transferred to the Investor Education and Protection Fund (IEPF) established under Section 124(6) of the Companies Act, 2013 wherein if the shareholder does not claim his dividend within a period of seven years from the date of its declaration, the dividend along with the shares in question would also stand vested in IEPF. This article traces the legislative history in relation to Unclaimed Dividend in India right from 1974 to 2020 and the march of law in this regard. It also traces the manner in which the Parliament has amended the law in relation to Unclaimed Dividend. Further the article discusses how the provision in relation to the 1956 Act and specifically Section 205 C as it then was, came to be challenged and the constitutionality of the said provision was upheld. The present controversy however is in relation to S.124(6) of the Companies Act, 2013 and the corresponding rules thereunder which contemplate that shares as a whole would be transferred to the IEPF Authority (if dividend not claimed within the 7-year period) and the procedure to reclaim and re-transfer the shares is a laborious and an onerous one. The said provision came to be recently challenged before the High Court, Madras as being unconstitutional and violative of provisions of the Constitution of India. The High Court however dismissed the writ petition by relying on the judgement in relation to Section 205C of the Companies Act, 1956. It further states that since there is a provision to reclaim the shares, the same is not in violation of Article 300 A or Article 14. Finally, the author concludes on

what the shareholders and their legal heirs need to be aware in relation to claiming of dividend and the consequences if the same are not claimed for over 7 years, based on the law as it stands today.

Reimagining Annual General Meetings – Virtually

95

S. N. Viswanathan and Aditya Ambastha

The unprecedented times prevailing in the world due to the pandemic caused by COVID-19 have compelled everyone to change and adapt to the situation. The regulators too have been taking initiatives and adapting to the situation by granting dispensations, relaxations and extension of time for various compliances. One such initiative by the Ministry of Corporate Affairs of India has been to permit companies to hold their General Meetings (Annual and Extraordinary) through Video Conferencing or Other Audio-Visual Means. The Companies Act, 2013 prescribes the provisions / framework relating to holding meetings of the Board of Directors and Committees through Video Conferencing or Other Audio-Visual Means but did not contain any provision for holding General Meetings through such means. Accordingly, the Ministry of Corporate Affairs has vide General Circular Nos. 14/2020, 17/2020 and 20/2020 issued on 08th April, 2020, 13th April, 2020 and 05th May, 2020 respectively permitted companies as well as prescribed the framework to be followed by companies for conducting General Meetings through Video Conferencing or Other Audio-Visual Means. This article attempts to broadly highlight the framework prescribed in the said circulars and nudges upon the finer aspects as well.

Need for introducing a settlement scheme under the Competition Act

99

Gurdev Raj Bhatia and Rudresh Singh

As per annual report of Competition Commission of India (CCI) for the year 2018-19, the CCI, in 127 cases of violation, has imposed an aggregate penalty of Rs.13,881 crores and out of that, it succeeded in recovering a miniscule penalty amount of about Rs.60 crores, as the aggrieved parties have taken recourse to appeal and the outcome of these long-drawn litigations is yet to be determined. The Government introduced the Competition Amendment Bill in 2019, but the proposed changes cannot be put to use as the Bill is yet to be passed by the Parliament and the detailed procedural framework is yet to be worked out by the CCI. The article discusses briefly about the Settlement Schemes now introduced for Companies and LLP's in the wake of COVID-19, which are not only expected to give relief to the stakeholders, but also improve filing compliances. Further the author adds that there are settlement schemes under the Direct Tax Laws and SEBI has also put in place a settlement mechanism. The article concludes that it is extremely pertinent that a one-time competition law settlement scheme be introduced by the CCI to accelerate the dispute resolution process and opines that Company secretaries should be at the forefront of the implementation of this initiative.

- **LMJ 07:07:2020** : If a valid contract is made for the acceptance by the company of specified property in payment of shares, the court will not inquire into the value of the consideration even at the instance of the liquidator. [SC]
- **LW 48:07:2020** : We are of the view that Ld. Tribunal has undertaken a lenient view in imposing lesser penalty, and therefore, we find no ground to interfere in the impugned order. [NCLAT]
- **LW 49:07:2020** : It is thus clear that the Adjudicating Authority failed to take notice that attachment of the property of the corporate debtor was made much before the initiation of CIRP, but it was only recorded in the register during CIRP.[NCLAT]
- **LW 50:07:2020** : We are thus of the opinion that efforts should be made to sort out the differences and disputes between the workers and the employers regarding payment of wages of above 50 days and if any settlement or negotiation can be entered into between them without regard to the order dated 29.03.2020, the said steps may restore congenial work atmosphere.[SC]
- **LW 51:07:2020** : The existence of other contractual terms also suggest that the interpretation of the clause, as suggested by the Arbitral Tribunal, is perverse and is not a possible interpretation of the contract.[SC]
- **LW 52:07:2020** : Employer has a right to withhold the gratuity during the pendency of the disciplinary proceedings; and the disciplinary authority has powers to impose the penalty of dismissal/major penalty upon the respondent even after his attaining the age of superannuation, as the disciplinary proceedings were initiated while the employee was in service. [SC]
- **LW 53:07:2020** : It is noticed that the respondent had asserted that it was not aware about the passing of assessment order although it is admitted that the same was served on the authorised representative of the respondent. Therefore, the High Court ought not to have entertained the subject writ petition filed by the respondent herein. [SC]
- **LW 54:07:2020** : In light of the peculiar facts and circumstances of the present case as detailed in this order, ends of justice would be met if the parties cease such cartel behaviour and desist from indulging in it in future, as directed earlier. [CCI]
- **LW 55:07:2020** : Sale of security of an account declared NPA is a remedy available to a secured creditor under the provisions of SARFAESI Act. Thus, the Commission is of the opinion that no competition concern can be said to have arisen in the present matter. [CCI]

From The Government P-112

- Companies (removal of names of companies from the register of companies) amendment rules, 2020
- Companies (appointment and qualification of directors) third amendment rules, 2020
- Companies (meetings of board and its powers) second amendment rules, 2020
- Clarification with regard to creation of deposit repayment reserve of 20% u/s. 73 (2) (C) of the companies act 2013 and to invest or deposit 15% of amount of debentures u/r.18 Of companies (share capital and debentures) rules 2014- COVID-19 -extension of time.
- Scheme for relaxation of time for filing forms related to creation or modification of charges under the companies act, 2013
- Clarification on passing of ordinary and special resolutions by companies under the companies act, 2013 read with rules made thereunder on account of COVID-19 - extension of time.
- Companies (share capital and debentures) amendment rules, 2020
- Relaxation from compliance to reits and invits due to the COVID-19 virus pandemic– amendment
- Collection of stamp duty on issue, transfer and sale of units of aifs
- Relaxation in timelines for compliance with regulatory requirements
- ‘Guidelines for portfolio managers’ - extension of implementation timeline
- Relaxation of time gap between two board / audit committee meetings of listed entities owing to the COVID-19 pandemic
- Further extension of time for submission of annual secretarial compliance report by listed entities due to the continuing impact of the COVID-19 pandemic
- Guidelines for order-to-trade ratio (otr) for algorithmic trading
- Further extension of time for submission of financial results for the quarter/half year/financial year ending 31st march 2020 due to the continuing impact of the COVID-19 pandemic
- Temporary relaxation in processing of documents pertaining to fps due to covid-19
- Operational framework for transactions in defaulted debt securities post maturity date/ redemption date under provisions of sebi (issue and listing of debt securities) regulations, 2008

- Securities and exchange board of india (substantial acquisition of shares and takeovers) (second amendment) regulations, 2020
- Securities and exchange board of india (issue of capital and disclosure requirements) (second amendment) regulations, 2020
- Conducting meeting of unitholders of invits and reits through video conferencing (vc) or through other audio-visual means (oavm)
- Relaxation in timelines for compliance with regulatory requirements
- Securities and exchange board of india (real estate investment trusts) (second amendment) regulations, 2020
- Securities and exchange board of india (infrastructure investment trusts) (second amendment) regulations, 2020
- Securities and exchange board of india (issue of capital and disclosure requirements) (amendment) regulations, 2020
- Securities and exchange board of india (substantial acquisition of shares and takeovers) regulations, 2020
- Investment by the sponsor or asset management company in the scheme
- Clarifications with respect to circular dated february 05, 2020 on ‘disclosure standards for alternative investment funds (aifs)’
- Relaxations from certain provisions of the sebi (issue of capital and disclosure requirements) regulations, 2018 in respect of further public offer
- Relaxation from compliance with certain provisions of the sebi (issue and listing of debt securities) regulations, 2008, sebi (non-convertible redeemable preference shares) regulations, 2013 and other sebi circulars due to the COVID -19 virus pandemic
- Participation of mutual funds in commodity derivatives market in india
- Framework for regulatory sandbox
- Relaxation in compliance with requirements pertaining to AIFs and VCFs

Other Highlights

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- ❖ GST CORNER
- ❖ ETHICS IN PROFESSION
- ❖ STARTUP INDIA
- ❖ CORPORATE GOVERNANCE CORNER

1

ARTICLES



- SEBI MEASURES FOR SMALL AND MEDIUM ENTERPRISES
- VOLUNTARY SECRETARIAL AUDIT AND MSMEs – A GAINFUL PRACTICE
- FACTORING IN INDIA VS. CHINA: DECODING THE MANUFACTURING AND TRADE FINANCING SUCCESS AND OPPORTUNITIES FOR MSME SECTOR IN INDIA
- FINANCING MSMEs FOR SELF-RELIANT INDIA
- NURSING MSMEs - THE GROWTH ENGINE OF INDIA
- MSME SECTOR: GOVERNMENT INITIATIVES AND RECENT CHANGES
- SME CAPITAL MARKET - STRENGTHENING MSME ECOSYSTEM AND FUNNELLING GROWTH
- MSMEs - SUBSTANTIAL CHANGE IN CRITERIA AND THE NEED TO ADDRESS CERTAIN ISSUES
- SME EXCHANGE – THE ALTERNATIVE FUND-RAISING PLATFORM FOR THE SMALL AND MEDIUM ENTERPRISES
- MICRO, SMALL & MEDIUM ENTERPRISES – THE WAY FORWARD
- UNDERSTANDING THE EMERGENCY CREDIT LINE GUARANTEE SCHEME
- RECOVERY OF DUES OF MICRO AND SMALL ENTERPRISES
- SME & START-UP PLATFORM OF STOCK EXCHANGES –GREAT OPPORTUNITY FOR ENTREPRENEURS
- RECENT REFORMS FOR MSMEs IN INDIA AMIDST COVID-19 PANDEMIC
- "PROCRASTINATION IS THE THIEF OF TIME" - IN THE CONTEXT OF SECTION 124(6) OF THE COMPANIES ACT, 2013
- REIMAGINING ANNUAL GENERAL MEETINGS – VIRTUALLY
- NEED FOR INTRODUCING A SETTLEMENT SCHEME UNDER THE COMPETITION ACT

SEBI measures for Small and Medium Enterprises

Small and Medium Enterprises (SME) are considered as the backbone of the Indian economy. In order to boost the SME sector, the government has taken several steps from time to time. Securities and Exchange Board of India (SEBI) which was established in 1992 by the Government of India is an authority to regulate the securities market. Ever since the setting up of the SME exchange by BSE and NSE, until FY 2018-19, 486 companies have been listed on the SME exchange of BSE and NSE. This article highlights the significant relaxations and exemptions given by SEBI under the applicable regulations for raising capital and disclosure requirements for enterprises listed on the SME platform.



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I. BACKGROUND

The Small and Medium Enterprises sector

The Small and Medium Enterprises (SME) sector has emerged as a highly vibrant and dynamic sector of the Indian economy over the past five decades. SMEs play a significant role in nation's development through contribution in domestic production in particular -

- having a positive impact on employment opportunities;
- production at comparatively lower capital cost than large industries;
- industrialisation of rural and backward areas, thereby, reducing regional imbalances and ensuring balanced regional development;
- assuring more equitable distribution of national income and wealth etc.

SMEs are complementary to large industries as ancillary units and contribute enormously to the socio-economic development of the country.

In order to promote the SME sector, the Government of India has taken various steps such as:

- easy access to credit including reduced time in sanctioning loans;
- tax benefits;
- compulsory procurement of products of SMEs by public sector companies – captive consumption;
- quick clearances and incentives under ease of doing business;
- social security for SME sector employees;
- simple procedures to resolve minor violations under the various applicable legislation including the Companies Act etc.

Securities and Exchange Board of India (SEBI)

SEBI was established under the Securities and Exchange Board of India Act, 1992 to:

- protect the interest of investors in securities
- promote the development of, and
- regulate the securities market and for matters connected therewith or incidental thereto.

One of the functions of SEBI is to develop the securities market; in line with this, SEBI has laid down legislation to enable companies to raise capital from the public through modes such as initial public offer (IPO), further public offer (FPO) etc. and list securities on the stock exchanges recognised by SEBI.

*The views expressed are the personal views of the authors

II. WHY LISTING? ADVANTAGES OF SME LISTING

A well-developed Small and Medium Enterprises (SMEs) Exchange platform can truly address some of the travails of the existing financial system. Development of an efficient and robust SME platform is a challenge globally and only a few jurisdictions worldwide can claim to have a dedicated successful platform for SMEs. Even in those markets, the concerns relating to market illiquidity in the SME platform are increasingly being highlighted. It is believed that in keeping with the global trends and with efficient SME platforms, more corporate SMEs may move to raising resources directly from the market.

SEBI's focus has been to provide robust and vibrant infrastructure for corporate India which includes SMEs, start-ups and promote innovation. At the same time it is also vigilant about the emerging risks with new products, new technology and global integration of capital market.

The SME platform helps SMEs to raise long term equity capital for growth and developmental purposes. An issuer, whose post issue face value capital is more than ten crore rupees and upto twenty five crore rupees, may also issue specified securities¹ in accordance with provisions of Chapter IX of ICDR Regulations.

Both issuers and investors have benefits / advantages of listing of securities on a stock exchange, which are detailed as follows:

Benefits for issuers:

- Streamlined platform for accessing capital markets
- Raise capital at cheaper cost to fund new projects / undertake expansion / diversification and acquisition
- Easy to raise subsequent capital FPO, Rights Issue etc.
- Liquidity
- Increased value
- Enhances branding and corporate value
- Spread the risk
- Variety of investors in large number

Benefits for investors:

- Liquidity
- Voting Rights
- Marketability and fair value
- Convenience

- Regulatory Environment and framework
- Corporate governance norms
- Timely disclosures / information
- Robust mechanism for trading in securities
- Settlement guarantee mechanism
- Grievance redress mechanism / Arbitration mechanism
- Exit opportunity to private equity investors etc.

Listing of specified securities of SMEs – how?

In recognition of the need for making finance available to SMEs, SEBI has decided to encourage promotion of dedicated exchanges and / or dedicated platforms of the exchanges for listing and trading of specified securities issued by SMEs. Consequently, SEBI amended the erstwhile SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (which were revamped in 2018) by inserting a Chapter XA (now Chapter IX) on "Issue of specified securities by small and medium enterprises", vide notification dated April 13, 2010.

As per the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (ICDR Regulations),

"SME exchange" means a trading platform of a recognised stock exchange having nationwide trading terminals permitted by SEBI to list the specified securities issued in accordance with Chapter IX of the ICDR Regulations and includes a stock exchange granted recognition for this purpose but does not include the Main Board."

"Small and medium enterprise or SME means an entity which has issued specified securities in accordance with the provisions of Chapter IX of ICDR Regulations."

Accordingly, SME enterprises can list their specified securities on the SME platforms of Stock Exchanges having nationwide trading terminals and are required to comply with certain exclusive regulatory provisions for listing of SME enterprises.

An issuer making an initial public offer in SME category shall satisfy the conditions of Chapter IX of ICDR Regulations as on date of filing of the draft offer document with the SME exchange and also as on date of filing the offer document with the Registrar of Companies. SEBI vide Circular No. CIR/CFD/DIL/6/2010, dated May 17, 2010 had prescribed the conditions for issuers seeking listing on SME Exchange.

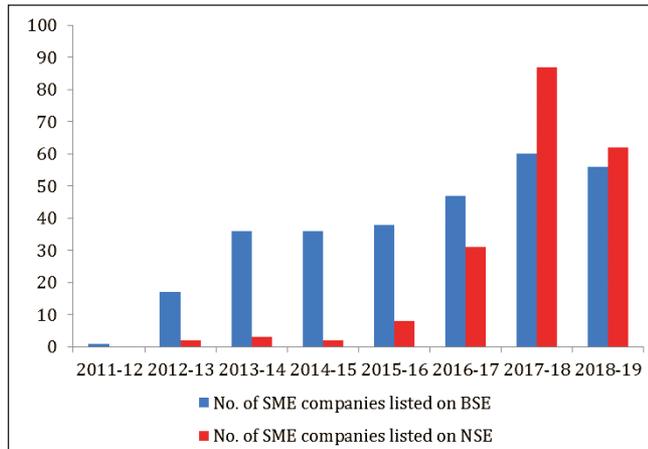
The number of companies listed in the SME Exchange has only grown, as can be seen from the following tables and charts:

Table 1: Number of companies listed on SME Exchange

Exchange	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	Total
No. of SME companies listed on BSE	1	17	36	36	38	47	60	56	291
No. of SME companies listed on NSE	0	2	3	2	8	31	87	62	195
Total no. of SME companies listed on exchange	1	19	39	38	46	78	147	118	486

Source: SEBI Annual Report 2018-19

¹ "specified securities" means equity shares and convertible securities under regulation 2(eee) of the ICDR Regulations, 2018

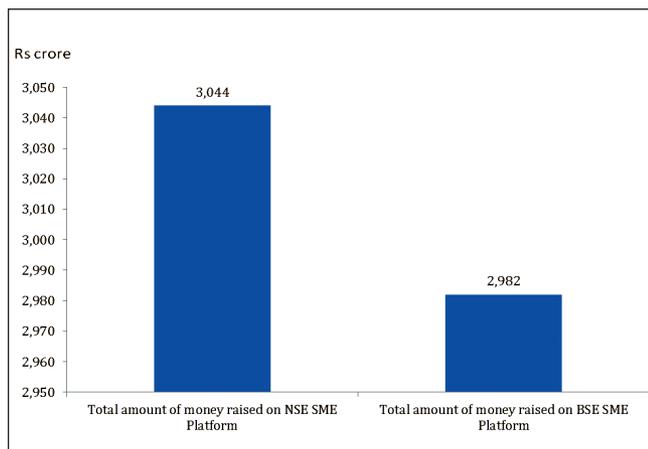
Chart 1: Number of companies listed on SME Exchange

The following table gives a snapshot of the capital raised by companies on the SME Exchange platforms:

Table 2: Capital raised by companies on SME Exchange by SMEs (2018-19)

(Rupees in crore)	
Total amount of money raised on NSE SME Platform	3,044
Total amount of money raised on BSE SME Platform	2,982
Total fund raised on SME Platforms	6,026

Source: SEBI Annual Report 2018-19

Chart 2: Capital raised by companies on SME Exchange by SMEs (2018-19)

Migration to the main board

An issuer, whose specified securities are listed on a SME Exchange and whose post-issue face value of capital is more than 10 crore rupees and up to 25 crore rupees, may migrate its specified securities to the main board of the stock exchanges if its shareholders approve such a migration by passing a special resolution through postal ballot to this effect and if such issuer fulfils the eligibility criteria for listing laid down by the Main Board.

During the FY 2019-20 there is a remarkable increase in migration of companies from SME platform to main board. In case of NSE, during the FY 2018-19 only 3 SME companies have migrated to main board, whereas in 2019-20 24 companies have migrated. In the case of BSE, 14 companies migrated during FY 2018-19 and 19 companies migrated during FY 2019-20.

III. STEPS TAKEN BY SEBI FOR PROMOTION OF SME LISTING

In order to facilitate capital raising by SMEs, SEBI has provided various relaxations and also built in certain exemptions from compliance with certain provisions under ICDR Regulations and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations), which are otherwise applicable to other listed entities. These are explained in the following paragraphs.

Relaxations available under ICDR Regulations in case of SMEs

On comparison with listing of securities on Main Board of Stock Exchange, there are no stringent norms for SMEs such as net tangible assets, operating profits and net worth. In case a company wants to list on the main board of the exchange, it has to meet the following eligibility criteria, which is laid down under Regulation 6(1) of the ICDR Regulations. In addition, for SMEs there is no requirement of obtaining observations from SEBI on offer documents for their public issues, which is mandatory for companies listing on main board, thus it can save time and cost:

- The Company has net tangible assets of at least 3 crore rupees, calculated on a consolidated basis, in each of the preceding three full years (of twelve months each), of which not more than fifty per cent are held in monetary assets.
- The Company has an average operating profit of at least 15 crore rupees, calculated on a consolidated basis, during the preceding three years (of twelve months each), with operating profit in each of these preceding three years.
- The Company has a net worth of at least one crore rupees in each of the preceding three full years (of twelve months each), calculated on a consolidated basis.
- If the Company has changed its name within the last one year, at least fifty per cent of the revenue, calculated on a consolidated basis, for the preceding one full year has been earned by it from the activity indicated by its new name.

In addition, there are some other benefits for SMEs, such as lesser number of minimum allottees *i.e.*, only 50, lesser listing fee, lower cost / time and effort, 100% underwriting of the issue etc. Potential based valuations could be offered by informed investors rather than benchmarking with matured large corporates on the main board.

The SME platform will attract a new class of long-term institutional risk investors, interested to invest in exciting fast-

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growing companies in India on a regulated platform. Moreover, getting listed on the SME platform will allow companies to grow to serious size, conserve value and a choice to migrate to the Main Board with a much more broad-based IPO.

Exemption from compliance of certain provisions of the LODR Regulations for SMEs

Compliances:

Before discussing about the exemptions available for SMEs under LODR Regulations, it is pertinent to state that since they will become public listed companies once they list on the SME Exchange, SME listed entities have certain obligations mentioned in the LODR Regulations to perform, which are broadly as under:

- Disclosure of events or information
- Submission of financial results
- Appointment of compliance officer / share transfer agent
- Preservation of documents
- Filing of information with stock exchanges
- Mode of payment of dividend or interest or redemption or repayment
- Grievance redress mechanism
- In-principle approval of stock exchanges for raising of capital
- Prior intimation to stock exchanges of actions such as record date
- Submission of shareholding pattern / statement of deviation in case of capital raising
- Maintenance of minimum public shareholding
- Transfer or transmission or transposition of securities
- Meeting of shareholders and voting
- Publishing advertisements in newspapers in respect of certain events etc.

Exemptions

Subsequent to issue and listing of securities, the SME entity is required to comply with certain provisions of LODR Regulations and Circulars issued there under. However, SEBI has granted certain relaxations to the issuers whose specified securities are listed on SME Exchanges in comparison to the listing requirements in Main Board, which, inter alia, include the following:

- **Financial results:** Periodical financial results may be submitted on a “*half yearly basis*” instead of “*quarterly basis*”.

- **Annual report:** Companies listed on SME Exchanges may send to their shareholders, a statement containing the salient features of all the documents, as prescribed in the Companies Act instead of sending full Annual Report.
- **Advertisements:** SMEs need not publish their financial results, as is required for companies listed on the Main Board and can make it available on their websites.
- **Corporate governance:** As per LODR Regulations, there are certain obligations on listed entities which can be broadly classified as corporate governance norms such as board constitution consisting of appropriate number of independent directors / woman director, board meetings, constitution of various committees such as audit committee / nomination and remuneration committee / stakeholders’ relationship committee / risk management committee, related party transactions and disclosure obligations.

“ The SME platform will attract a new class of long-term institutional risk investors, interested to invest in exciting fast-growing companies in India on a regulated platform. Moreover, getting listed on the SME platform will allow companies to grow to serious size, conserve value and a choice to migrate to the Main Board with a much more broad-based IPO.

Compliance with certain corporate governance provisions as specified in Regulation 15(2) of LODR Regulations, shall not apply in respect of -

- (i) The listed entity having paid up equity share capital not exceeding Rs.10 crores and net worth not exceeding Rs. 25 crores, as on the last day of the previous financial year.
- (ii) The listed entity which has listed its specified securities on the SME Exchange.

SEBI has granted exemptions to SMEs (those which fall in (i) and (ii) above) from compliance with certain corporate governance norms under LODR Regulations, which are otherwise required to be complied by any other listed entity. Some of such important exemptions available for SMEs are enumerated below:

- a. Board composition having optimum combination of executive and non-executive directors with at least one woman director and not less than fifty percent of non-executive directors and various other provisions related to composition of board.
- b. Constitution of various committees such as Audit Committee, Nomination and Remuneration Committee, Stakeholders Relationship Committee, Risk Management Committee.
- c. Formulation of vigil mechanism, policy on materiality of related party transactions and dealing with related party transactions.

- d. Corporate governance requirements with respect to subsidiary of listed entity such as at least one independent director on the board of directors of the listed entity shall be a director on the board of directors of an unlisted material subsidiary, whether incorporated in India or not.
- e. Obligations with respect to independent directors, employees including senior management, key managerial persons, directors and promoters.
- f. Submission of quarterly compliance report on corporate governance and all material transactions with related parties in the format as specified by SEBI from time to time to the recognised stock exchange(s) within fifteen days from close of the quarter.
- g. Disclosure of certain details on the website of listed entity such as terms and conditions of appointment of independent directors, composition of various committees, code of conduct of board of directors, vigil mechanism policy on related party transactions etc.

IV. NATIONWIDE AWARENESS CAMPAIGN FOR SMES

SEBI has initiated awareness programs, in coordination with stock exchanges, to interact with SMEs from different clusters and familiarize them with the platform being offered by the stock exchanges for the benefits of SMEs. These programs are conducted every year. During 2018-19 SME meets were held at Bhubaneswar, Shimla, Varanasi and Lucknow. There was active participation by respective State Governments too in these programs.

During these programs, technical sessions were held wherein stock exchanges interacted with SMEs in small groups, apprised them about the regulatory framework for SMEs and addressed their queries and apprehensions. The technical sessions were followed by the main event wherein the senior management of SEBI, functionaries from the respective State Government and representatives of stock exchanges addressed the representatives of SMEs.

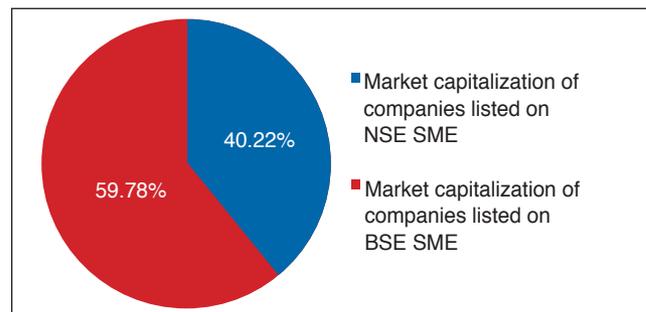
As can be seen from the below table and chart, the market capitalization of companies listed on the SME Exchange has only grown exponentially, which is an indication of the fact that companies have found this to be a viable model to tap capital.

Table 3: Market capitalization of companies listed on SME Exchange (2018-19)

(Rupees in crores)	
Market capitalization of companies listed on SME platform of NSE	12,243
Market capitalization of companies listed on SME platform of BSE	18,197
Total market capitalization of companies listed on SME platform	30,440

Source: SEBI Annual Report 2018-19

Chart 3: Market capitalization of companies listed on SME Exchange (2018-19)



V. INNOVATORS GROWTH PLATFORM

SEBI had put a regulatory framework for Institutional Trading Platform (ITP) vide amendments notified to the ICDR Regulations on August 14, 2015 with a view to facilitate listing of new age start-ups in sectors like e-commerce, data analytics, bio-technology and other start-ups. In view of the evolving start-up ecosystem, SEBI constituted a Group on June 12, 2018 to review the then extant Institutional Trading Platform (ITP) framework and come up with recommendations on the same. With a view to position the product differently, the Group recommended to rename the start-up platform / Institutional Trading Platform as 'Innovators Growth Platform (IGP)'. Further, the Group deliberated various issues related to IGP and made recommendations based on which relevant amendments were made to the ICDR Regulations, 2018, replacing the old Chapter X with a new one, introducing the IGP.

IGP means the trading platform for listing and trading of specified securities of issuers that comply with the eligibility criteria specified in the ICDR Regulations. This platform is available for an issuer seeking listing of their specified securities pursuant to an initial public offer or for only trading on a stock exchange of their specified securities without making a public offer. An issuer is eligible to list its specified securities on IGP, which is intensive in the use of technology, information technology, intellectual property, data analytics, bio-technology or Nano-technology to provide products, services or business platforms with substantial value addition shall be eligible for listing on the IGP subject certain conditions.

An issuer, whose specified securities are traded on the IGP without making a public issue may exit from that platform, if its shareholders approve such an exit by passing a special resolution through postal ballot, where ninety percent of the total votes and the majority of non-promoter votes have been cast in favour of such proposal and the recognised stock exchange where its shares are listed approves of such exit.

In order to be eligible for listing on the IGP, the issuer shall be a company which is intensive in the use of technology, information technology, intellectual property, data analytics, bio-technology or Nano-technology to provide products, services or business platforms with substantial value. 25 percent of the pre-issue capital, of the Issuer Company for at least a period of 2 years, should have been held by:

- a. Qualified Institutional Buyers;
- b. Family trust with net-worth of more than five hundred crore rupees;

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- c. Category III Foreign Portfolio Investor;
- d. A pooled investment fund with minimum assets under management of USD 150 million and registered with a financial sector regulator in the jurisdictions where it is resident. The fund should be a resident of a country whose securities market regulator is a signatory to IOSCO's MOU or a signatory to bilateral MOU with SEBI and not a resident in a country identified in the public statement of Financial Action Task Force as deficient in Anti Money Laundering (AML) and combating financing of terrorism.
- e. Accredited Investors for the purpose of IGP, to include:
- any individual with total gross income of Rs.50 lac annually and who has minimum liquid net worth of Rs.5 crore or
 - any body corporate with net worth of Rs.25 crore
 - Not more than 10% of the pre-issue capital may be held by Accredited Investors.

Framework for accreditation of investors

SEBI vide Circular No. SEBI/HO/CFD/DIL2/CIR/P/2019/67, dated May 22, 2019 had prescribed the framework for the process of accreditation of investors for the purpose of Innovators Growth Platform. Under the framework, the investor, having a demat account with a Depository, will make an application to the Stock Exchanges/Depositories in the manner prescribed by them for recognition as an AI. The Exchanges/ Depositories will grant accreditation to investors subject to their eligibility, which shall be valid for a period of three years.

Comparison of eligibility criteria for listing of companies on different platforms of stock exchange :

Parameters	Main Board	SME	IGP
Paid up capital (INR)	Not less than 10 Cr	Upto 10 cr – mandatorily on SME 10 cr - 25 cr optional	Not less than 10 Cr
Minimum No. of allottees	1,000	50	50 ²
IPO application size (₹)	10,000-15,000	1,00,000	2,00,000
Observations	Issued by SEBI	Issued by Exchanges	Issued by SEBI
Market Making	No	Mandatory	No
Reporting requirements	Quarterly	Half-yearly	Quarterly
Public offer (raising money)	Compulsory	Compulsory	Optional
% of funds raised that can be used for General Corporate Purposes	25%	25%	100%
Lock-in of promoter holding	3 years	3 years	6 months

² Reduced from 200 in April 2019



“ An issuer, whose specified securities are traded on the IGP without making a public issue may exit from that platform, if its shareholders approve such an exit by passing a special resolution through postal ballot, where ninety percent of the total votes and the majority of non-promoter votes have been cast in favour of such proposal and the recognised stock exchange where its shares are listed approves of such exit.

Eligibility requirements for Companies listed on IGP to trade under regular category of main board of Stock Exchanges

The following general conditions and the eligibility criteria stipulated in ICDR Regulations have to be fulfilled by the companies listed on IGP, desirous of trading under regular category of main board of stock exchanges:

- The Company should have been listed on the IGP for a minimum period of one year.
- At the time of making the application for trading under regular category of main board, the number of shareholders should be minimum 200.
- The company, any of its promoters, promoter group or directors are not debarred from accessing the capital market by the Board.
- None of the promoters or directors of the company is a promoter or director of any other company which is debarred from accessing the capital market by the Board.
- The company or any of its promoters or directors is not a wilful defaulter.
- None of the promoters or directors of the Company is a fugitive economic offender.

VI. CONCLUSION

SMEs play a major role in most economies, particularly in developing countries. SMEs account for the majority of businesses worldwide and are important contributors to job creation and global economic development. The tables and charts above show an increase in number of SMEs listed on SME platform from time to time. In view of the Government of India's commendable efforts to empower / encourage SMEs, and SEBI's initiatives to promote SMEs, it can be concluded that there is a potential growth for SME sector in India and it can play a significant role in India's GDP.

Voluntary Secretarial Audit and MSMEs – A gainful practice

Micro Small and Medium Enterprises (MSME) have significantly contributed to the growth and development of the Indian economy. Though small in size, these enterprises face challenges similar to those of large industrial houses such as scalability, lack of systems and controls, sustenance, access to funds, profitability and resource management, in addition to adherence with regulatory and statutory compliance. By virtue of their size and scale of operations, they fall outside of the ambit of larger corporate compliance such as mandatory Secretarial Audit. An attempt is made in this article to highlight the potential advantages of adopting a voluntary Secretarial audit for MSMEs to counter some of the above challenges.



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BACKGROUND

It would be of interest to note that the Companies Act, 1956 did not contain any provision with respect to Secretarial Audit. However, the Ministry of Corporate Affairs (MCA) had released Corporate Governance Voluntary Guidelines 2009¹, which introduced the concept of voluntary secretarial audit as a mechanism to provide an assurance regarding the existence

¹ MCA Guidelines of December 21, 2009

of effective compliance system. Certain large companies seeing value in this exercise introduced the voluntary Secretarial Audit by a practising company secretary. With proactive efforts from the Institute of Company Secretaries of India (ICSI) in presenting a strong case for Secretarial Audit, it led to the introduction of mandatory Secretarial Audit through Section 204 of the Companies Act, 2013. Since its introduction, Secretarial Audit has now become a commonplace corporate jargon and it can be safely said that Secretarial Audit has come of age.

The Secretarial Audit as it stands today compulsorily applies to:

- all listed companies;
- Certain class of larger unlisted companies based on criteria of Capital, Turnover and Borrowings and
- Certain private companies based on criteria of Borrowings.

In other words, conducting Secretarial Audit is voluntary for those companies which do not fit into the aforesaid criteria.

In the context of MSMEs, considering their size and structure, the mandatory provisions of Secretarial Audit under the Companies Act, 2013 would not be applicable to most of the companies in the MSME sector.

The question that arises is whether companies in the MSME sector would find it useful to go in for a voluntary secretarial audit. In this article, an attempt is made to tackle the precinct of Voluntary Secretarial Audit for the MSME sector and how such an audit would be useful and relevant to such companies such that it helps to foster growth and success of this sector going forward.

PREDOMINANCE OF THE MSME SECTOR IN INDIA

Before we launch into the heart of the topic, it is essential that we set the backdrop right by stressing on the significance of the MSME sector in India. Without debate, the MSME sector has emerged as a most vibrant and dynamic sector of the Indian economy over the past decades. The sector falls under the Ministry of Micro, Small and Medium Enterprises (Ministry

of MSME). As per the last available statistics published, there are over 633.88 lakh MSME enterprises in India contributing to 28.9% of its GDP². It is also one of the sectors creating the largest employment opportunities in India. Today the MSME sector has broadened its domain, producing a diverse range of products and services, catering both to the domestic as well as international markets. Hence it is no surprise that the Government does its best for the promotion of the MSME sector. Even in the toughest of times, the MSMEs have been given their due share. In the wake of the Pandemic, the Government announced significant measures for economic revival. As a pre-cursor to this, and at the most opportune time, the definition of MSME enterprises was amended, so as to ensure maximum number of enterprises could benefit from it. As per the new MSME definition, the distinction between the manufacturing and services has been removed by making the investment amount and annual turnover similar for enterprises engaged in both the sectors. Below is the new classification for the MSME sector:

MSME – Composite Criteria: Investment and Annual Turnover			
Sector/ Enterprise Type	Micro Enterprise	Small Enterprise	Medium Enterprise
Manufacturing & Services Sector, Both	Investment in plant and machinery or equipment does not exceed Rs. 1 crore and Turnover does not exceed Rs. 5 crore	Investment in plant and machinery or equipment does not exceed Rs. 10 crore and Turnover does not exceed Rs. 50 crore	Investment in plant and machinery or equipment does not exceed Rs. 50 crore and Turnover does not exceed Rs. 250 crore

Source: MSME notification dated June 26, 2020.

The 'global' to 'local' trend which is fast catching up, has provided great impetus to the growth of this indigenous sector. With more and more people looking for local substitutes for global brands, this sector is in a position to take its rightful and well-deserved place, receiving the much-needed attention. This sector has ample potential to rise to the occasion and meet the ever-increasing demand of the domestic markets and even compete with global players in the international market. Such is the diverse and polished skill set and talent that this sector boasts of.

CHALLENGES OF THE MSME SECTOR

However, the MSME sector faces numerous challenges that have to be overcome on its growth path. Despite all the success that has been achieved by this sector, there are many gaps. By and large many companies in the MSME sector are not professionally managed, which in today's globalized economy is very much the need of the hour. To ensure success and sustainable growth, a MSME unit needs to have internal wisdom to understand the ecosystem of the sector in which it exists, inbuilt process to ensure adherence to norms, high adaptability to changes and simple yet effective risk analysis mechanism.



Though the MSMEs have their respective strengths and skill sets in the main area of their business, they lack an ecosystem which would help them flourish and thrive, rather than just survive. In this situation, a glaring need is felt to have in place a process or mechanism which will help this sector overcome its limitations and consequently achieve their full potential. A concurrent voluntary Secretarial Audit process is one of the tools, which enables the sector to implement a corrective and preventive action plan in response to probable business risks.

POTENTIAL BENEFITS OF VOLUNTARY SECRETARIAL AUDIT FOR FAST GROWING MSMEs

Companies that are growing fast and are in transition from one level to another will definitely find a Voluntary Secretarial Audit along the lines of Section 204 of the Companies Act, 2013 with some minor variations, a value proposition rather than a cost proposition, as this will help these companies to identify where they stand from a governance point of view. Following are some of the areas, where a proactive Secretarial Audit will go a long way in creating / adding value to the company: -

- Improved Compliance Management System:** Section 134(3)(c) read with sub section 5(f) of the Companies Act, 2013 dealing with Directors' Responsibility Statement requires the director to state in the directors' report that the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively. Fast growing companies, where mandatory Secretarial Audit is not applicable, may find it advantageous to conduct a voluntary secretarial audit on an ongoing basis which would address this requirement of the Board of Directors with respect to Directors' Responsibility Statement.
- Facilitating Foreign Investments:** Foreign investors are usually known to exercise detailed due diligence before initiating investments in companies. One of the major considerations of the foreign investors is the exposure to compliance risk in another jurisdiction. It is customary for Indian investee Companies to undertake an internal due diligence in which one of the inputs could be a voluntary secretarial audit. The greatest advantage from the point of view of Indian investee companies is that it helps them to rectify non-compliances and prepare confidently before the foreign investors undertake a detailed due diligence

² Annual Report 2018-2019 of the Ministry of Micro Small and Medium Enterprises

- c) **Input to Due Diligence exercises:** One of the significant components of any due diligence is audit of secretarial compliances. This is usually undertaken in cases of Mergers, Takeover, Acquisition, IPO, P/E funding etc. If the Companies already have in place a mechanism of voluntary secretarial audit, that would qualify as a significant input to the due diligence exercises and save the companies from the otherwise rigorous Secretarial Due Diligence that would be undertaken covering a longer time frame.
- d) **Sectoral and Specialised compliances:** Quite a few growing companies belonging to sectors like Insurance, Banking, Telecom, Pharmaceuticals, Aviation as also intermediaries such as NBFC's registered with RBI and various other intermediaries registered with SEBI have to ensure timely regulatory compliances of their sectoral regulators. In some of the sectors, the cost of non-compliances is quite prohibitive. Voluntary Secretarial Audit covering such sectoral compliances alongside those of Companies Act, 2013 would come in very handy for these companies.
- e) **CARO 2020 – Emphasis of Statutory Auditor on Company Law related areas :-** A statutory auditor in his report to the shareholders has to deal with compliances of the certain specific provisions of the Companies Act, 2013 such as Section 185 & 186 (Loans and Investments); Section 73 to 76 (Deposits); Section 148 (Maintenance of Cost Records); Section 42 and 62 (Private Placement & Preferential Allotment); Section 177 (Audit Committee) and Section 188 (Related Party Transactions) in respect of all public companies and even in respect of private companies with much lower thresholds (with reference to audited financial statements) as under :-
- Companies with paid up capital and free reserves of Rupees One Crore or more as at the end of the last financial year or
 - Companies with borrowings from banks and financial institutions of Rupees One Crore or more as at the end of the last financial year or
 - Companies with total revenue of Rupees Ten Crores or more in the last financial year.

Where CARO 2020 is applicable, ongoing voluntary secretarial audit which as part of its scope covers the areas of concern of the Statutory Auditors, helps the company to prepare for the audit process proactively in a better manner than it would do preparing at the year end.

There is no doubt that growing Companies in the MSME sector, depending upon the complexities involved will generally get significant value addition from a properly structured voluntary secretarial audit on a continuous basis

STRETCHING AUDIT TO MICRO AND SMALL ENTERPRISES

When it comes to operating MSME units that are Micro or Small, Secretarial Audit in its strict sense as visualized in the Companies Act, 2013 will have to outgrow its scope and travel towards a conceptual process, wherein the audit process is

redesigned to meet the requirements of this sector. The audit itself will have to be multi-disciplinary and the audit process should be aimed at strengthening internal procedures and controls, thereby helping to develop a robust and mercurial in-built system of governance, risk, controls, compliance and reporting. As opposed to being an end of year post mortem exercise involving inspection of records and thereafter reporting on things that have been done/happened or not been done/not happened, it needs to evolve into an all-year-through process of analysis, review, verification and reporting on the different procedures, practices, compliance and efficiency of the organisation. In other words, it is a proactive approach to Secretarial Audit. The Scope of such Secretarial Audit would be to monitor and verify the adherence to various rules, regulations, norms of schemes and directives applicable to them. A voluntary secretarial audit, as envisaged herein, will enable MSMEs to identify, examine and correct various possible errors and mistakes periodically and establish a robust compliance mechanism in the entity. The benefits of having such a system in place are immense in so far as an MSME is concerned. Systematic application of the audit process provides the enterprise with timely inputs on risk mitigation, improving internal controls and better overall governance.

As a player in a most competitive sector, the MSME unit needs to have the ability to understand and adapt technological advancements in the respective sector from which it will benefit, a flexible internal system to meet challenges and the ability to identify probable risks, be it market risks or those that specifically apply to it. An audit process supports the unit to establish all of the above, while at the same time helping to expose any weakness in the existing system. Once a well-designed Secretarial Audit process is put in place, the auditor would be in a position to generate periodical reports on the system and its workings. Based on the reports generated, he would not only be able to advise the unit of any opportunities or risks that he foresees, but also alert the unit on any missing compliance or reporting requirements. This would help the unit in taking timely steps to mitigate the risks, exploit the opportunity or make good the non-compliance, as the case may be.

“ When it comes to MSME units that are Micro or Small, Secretarial Audit in its strict sense as visualized in the Companies Act, 2013 will have to outgrow its scope and travel towards a conceptual process, wherein the audit process is redesigned to meet the requirements of this sector. The audit itself will have to be multi-disciplinary and the audit process should be aimed at strengthening internal procedures and controls, thereby helping to develop a robust and mercurial in-built system of governance, risk, controls, compliance and reporting.

With the passage of time, the process would further evolve and strengthen, making the unit confident in its internal systems and controls. To quote a typical example of risk mitigation, let us assume a software unit which is involved in creating applications for the hotel industry. In the event of a slide in

the hotel industry business, the software unit would need to automatically re-channelize its internal resources including human resources and identify and adapt to an alternate sector, say the pharmaceutical industry. A proactive Secretarial Audit process, would ensure that such a risk has already been identified and planned for with necessary corrective measures, making it far easier to make the transition, thus mitigating the risk of an otherwise catastrophic situation.

Presently, MSMEs are offered benefits under myriad schemes floated by the Government. The Schemes extended more often than not call for adherence to several pre-conditions and post compliance measures. A MSME unit with a strong system in place will find it far easier to comply with all these requirements contrary to a unit which lacks such a system. This is the benefit of an in-built audit mechanism which is seamlessly woven into the business fabric, making it far more effective and dynamic. Unlike the large corporates, a MSME unit would find it difficult to have a separate compliance or audit team. Hence the need to blend the audit process into each of the procedures and operations of the unit, with every person in the unit being accountable and responsible for adherence to his audit goals/targets in addition to his job goals. It also calls for continuous evaluation and improvement of the system, in view of the changing business and economic environment. This alone will help the unit in securing timely data and information from within the organisation, making timely decisions and directing timely action for achieving its business objectives. The voluntary audit process thus ensures continuity and ensures that its operations actually translates into profitability for the unit. Profitability is the single largest factor that contributes to the longevity of the unit and its ability to outrun other units operating in the same space. It helps the unit in performing consistently well, rather than in fits and starts when a host of external factors are exceedingly beneficial resulting in a windfall.

“ Once a well-designed Secretarial Audit process is put in place, the auditor would be in a position to generate periodical reports on the system and its workings. Based on the reports generated, he would be able to advice the unit of any opportunities or risks that he foresees, as also alert the unit on any missing compliance or reporting requirements.

ENHANCED CREDIBILITY

While the unit enjoys tangible benefits of having a voluntary audit process as above, there are several intangible benefits that accrue from it. The most important is the enhanced credibility that the unit enjoys with its stakeholders. A unit which is keen on systems and processes and which staunchly opts for voluntary audit, instills greater confidence and trust among its stakeholders like banks, financial institutions, vendors, customers and investors. The transparency in its dealings and consistent conformity to all applicable regulations and compliance makes such a unit far more appealing to stakeholders when compared to others. It enjoys greater acceptance, has better powers of negotiation and consequently stands the best chances to flourish and prosper in the sector. Investors are more open to fund such units that



display rigorous adherence to systems and processes and having a sound audit procedure in place, rather than fall into a rut of perennial non-compliance and inconsistency. Such units soar the due diligence trials and win the confidence of investors in terms of their sustainability making them sound investment opportunities.

CONCLUSION

Yet another positive aspect of voluntary secretarial audit is that the organisation is not put under any undue pressure. It is looked upon as a process of affirmation and validation rather than as an activity to identify and magnify past errors, only to be prosecuted and penalized for the same. Being so, voluntary Secretarial audit should find greater acceptance and favour among the MSME sector. However though, at least initially, efforts may be needed in helping them understand the concept and the benefits that are set to accrue from adopting the same. A MSME unit having a management which is passionate about scaling great heights, would eagerly embrace voluntary secretarial audit, as a stepping stone to its future success and sustenance. It opens up avenues for the MSME sector to tap into the vast resource pool of professionals, who have the experience of dealing with similar operational and financial challenges on a greater scale. This would also be a good opportunity for the MSME sector to imbibe and embrace good practices of the bigger industrial houses.

In so far as the professionals in the CS fraternity are concerned, this would be a modified area of practice with lesser focus on the letter of the law and its compliance and greater thrust on systems, procedures, controls and of course the spirit of governance. A conscious effort is to be made by the CS to understand the business of the MSME, its working, and the systems and controls that have been put in place. Hitherto, this is largely not part of the regular Secretarial audit process. Additionally, this would call for meaningful interactions with the management of the unit to understand how and why operations are carried out in a certain way, so as to be able to suggest better, improved and effective systems and processes. This is more in line with systems and process audit with a far more proactive approach. As professionals, most of us are well equipped to execute this with the same finesse and precision that the CS professionals have always displayed each time that a new challenge has been posed before us. All it needs is to re-orient to a little unconventional thinking in redesigning the present approach to Secretarial Audit to make it more proactive and responsive to the needs of the MSME sector while at the same time injecting some bit of ingenuity in the advice and suggestions made to them, and never losing sight of the bigger vision of ensuring the success of our MSME sector.

Factoring in India Vs. China: Decoding the Manufacturing and Trade Financing Success and Opportunities for MSME Sector in India

Global pandemic due to COVID-19 has impacted businesses and the disrupted market liquidity has severely impacted MSMEs. Prominently, the financial need of MSME Sector in India largely depends on most sought after credit solutions i.e. collateral based or fixed chargeable supply of credit or working capital loans from banking and financial institutions. It is here that the increasing rate of unemployment and decreasing income levels due to unprecedented pandemic has pushed the demand of credit sales which may increase risk of debtors' defaults, blockage of entrepreneur's capital and rise in NPAs. As against this, Factoring is an alternative and a key source of trade receivable finance for managing liquidity that comes in handy particularly for MSMEs. The invoice financing model adopted by Europe, U.S and followed by China indicates a good scope for domestic and international factoring in India. Factoring provides an opportunity to build internal financing capabilities, so that growth can be targeted. This in turn can contribute towards much needed manufacturing surplus for increasing level of export, making India a manufacturing hub and thereby, boosting economy as a whole.



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1. INTRODUCTION

The word factoring is derived from "Factor" which comes from Latin word, 'Facere' means Agent. As per Reserve Bank of India's Factoring Regulation Act, 2011 factoring is defined as "the business of acquisition of receivables of assignor

by accepting assignment of such receivables or financing, whether by way of making loans or advances or in any other manner against the security interest over any receivables". The Factoring services in India are provided either with recourse, without recourse or on limited recourse basis. As per provision of the India's Factoring Regulation Act, 2011, the parties in a factoring transaction include a) Assignee i.e. the party in whose favour the receivable is transferred by b) the Owner of receivables called Assignor and c) the Debtor i.e. the customer of assignor who is liable to pay for transaction resulting out of existing, accruing, future, conditional or contingent situation or otherwise as the case may be. As a matter of guidelines and practices, in case of with-recourse factoring, the exposure is reckoned on the assignor and in case of without-recourse factoring, the exposure is reckoned on the debtor, whether credit risk protection is provided or not. In cases of international factoring where the entire credit risk has been assumed by the import factor the exposure is not reckoned on the debtor.

2. HISTORICAL EVOLUTION OF FACTORING

The reference of using factoring as a major funding option is found in the ancient times where the sixth Babylonian King named Hammurabi had set down the code of laws and rules for merchants in the 18th century B.C. In that era, the agents who used to give guarantee for trade credits to Roman merchants were called "factors". With an increase of trade, the choices of funding in different forms increased in Medieval Europe. Charging higher fees for lending money was prohibited by laws as per Christian religion and "debtors' prisons" were founded in this era to ensure that obligations were paid in full.

With the transition of European history from the middle to modern age, Factoring continued to develop as a specialized form of financing for European merchants. It became a very popular practice of the merchant agents to finance the shipments of raw materials between the American Colonies and Europe. The agents having taken possession of shipment from origin, used to deliver it at the point of sale for a small percentage before seller would have realized the profit.

*The views expressed are the personal views of the authors

Factoring in India Vs. China: Decoding the Manufacturing and Trade Financing Success and Opportunities for MSME Sector in India

Over the period, agents had shifted their focus from physical delivery based margin of profit to ensuring creditworthiness of buyers to extending finance. Hence, the factoring concept of guaranteeing payment to sellers from creditworthy customers evolved. In the modern times, the Factoring product emerged in 1960s in the developed economies for facilitating trade finance and now, it is a far more mature product as it takes one of the many forms of “open account receivables finance” products under the heading of supply chain finance which is offered across the world.

3. GLOBAL BUSINESS SCENARIO OF FACTORING

The Factoring industry worldwide achieved an all-time high in 2019 with 5.4% growth rate as compared to year 2018, after slowdowns caused by several trade wars and other adversities.

Though volume of factoring in Asia Pacific performed with a 1.1% negative variance as compared to 2018, the growth has been primarily led by Europe, followed by Asia Pacific and US in terms of absolute numbers. The volume of business generated was registered at € 2,917 billion in 2019. In terms of Y-O-Y growth, the Middle East countries showed impressive growth of 12.4% followed by 10.8% in Africa. In terms of turnover of factoring in 2019, Europe led with 67.75%, followed by Asia Pacific with 23.57%, whereas North America shared nearly 3% along with share of 4.5% of South America and remaining very small percentage by Africa and Middle East.

Unlike impressive growth during 2019, the impact of COVID-19 on trade volumes in the first half of calendar year is expected to dilute the performance figures of 2020. Largely, the economic contraction as well country’s shifting preference to source the supply chain may hit factoring volume worldwide.

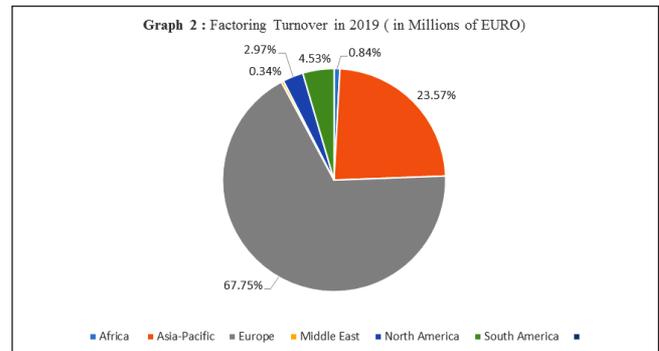
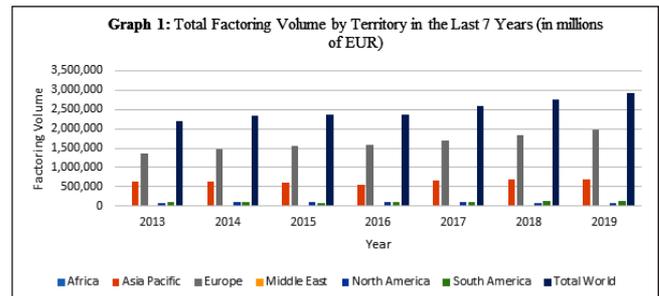
Table 1: Total Factoring Volume by Territory in the Last 7 Years, (in Millions of EURO)

Country (Companies)	2013	2014	2015	2016	2017	2018	2019	Variance 2018/19
Africa (154)	23,123	21,094	18,721	20,393	21,671	22,174	24,562	10.8%
Asia Pacific (2201)	634,441	648,716	596,633	555,550	657,189	695,562	687,594	-1.1%
Europe (688)	1,353,742	1,462,510	1,556,977	1,592,988	1,701,939	1,829,142	1,976,239	8.0%
Middle East (23)	5,000	8,498	8,028	7,583	8,019	8,840	9,937	12.4%
North America (323)	89,419	103,501	100,530	95,072	92,392	90,101	86,742	3.7%
South America (847)	101,412	103,124	86,826	104,396	117,088	121,248	132,031	8.9%
Total World (4236)	2,208,372	2,347,513	2,367,790	2,375,967	2,598,298	2,767,067	2,917,105	5.4%

Table 2: Factoring Turnover by Region in 2019 (as a percentage of total)

Africa	Asia-Pacific	Europe	Middle East	North America	South America	Total
0.84%	23.57%	67.75%	0.34%	2.97%	4.53%	100%

Sources of tables 1&2 : Extracted from FCI Annual Review 2020



4. INDIA'S EXPERIENCE IN FACTORING SPACE

The scope of Factoring in India was for the first time advocated by the committee of RBI appointed under the chairmanship

Factoring in India Vs. China: Decoding the Manufacturing and Trade Financing Success and Opportunities for MSME Sector in India

of the then Managing Director of State Bank of India Shri C S Kalyanasundaram in year 1988. The legal framework for factoring in India has evolved after the enactment of The Factoring Regulation Act, 2011. As a matter of fact, India has a more comprehensive regime. The factoring companies have broadened their scope in terms of businesses covered. They have been servicing right from the traditional forms of factoring by operating notification arrangements to advanced options into diversified business segments.

As the credit function is based on outsourced mechanism, therefore it extends the SMEs to be an effectively addressable marketplace. This insulates SMEs from the survival-threatening

destructive impact of financial losses and bankruptcy or due to the possibility of default of a major customer/debtor. In a way, the factoring products and services have matured both in terms of experience and expertise as a key solution to support the trade liquidity and management of receivables i.e. especially for SME sector. But from the viewpoint of volume of business and number of beneficiaries in India, the sector is not yet matured. This is in comparison with several countries of Europe and US as well as in China but it is still quoted to be in the beginning stages in India. Going forward, the quantitative data of service providing companies as well as factoring turnover in India is given in table 4.

5. COMPARING FACTORING VOLUME OF INDIA VS. CHINA

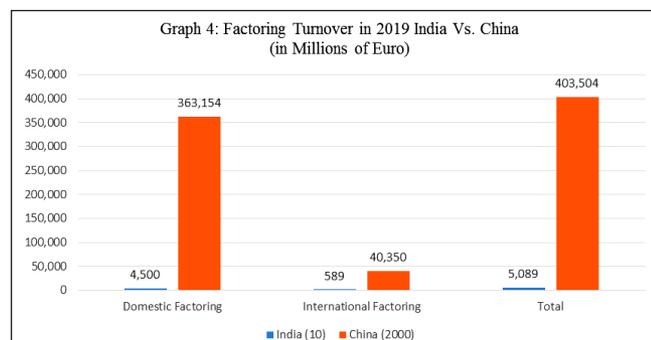
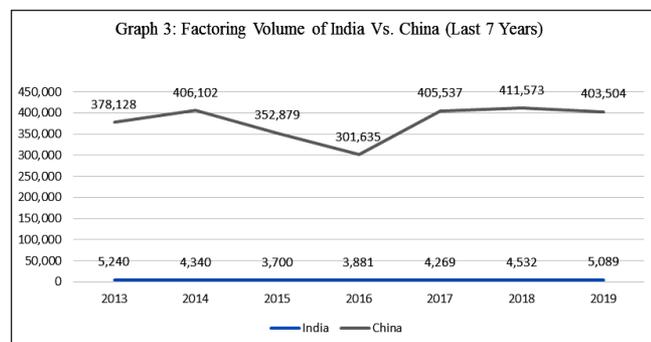
Table 3: Data from 2013 to 2019

(in Millions of EURO)								
Country	2013	2014	2015	2016	2017	2018	2019	Variance 2018/19
India	5,240	4,340	3,700	3,881	4,269	4,532	5,089	12.3%
China	378,128	406,102	352,879	301,635	405,537	411,573	403,504	-2.0%

Table 4: Factoring Turnover in 2019 India vs. China

(in Millions of EURO)				
Country	No. of Companies	Domestic Factoring	International Factoring	Total
India	± 10	4,500	589	5,089
China	± 2000	363,154	40,350	403,504

Sources of tables 3&4 : Extracted from FCI Annual Review 2020



KEY FINDINGS

Reference to table 3, Factoring companies in India achieved 12.3% growth in business with volume of € 5,089 Million in

2019 as compared to € 403,504 Million business of china. This is even much lower than UAE (not covered in table) which is found to have done invoice factoring of € 6,435 Million in 2019. Invoice Factoring is an expensive method of finance as compared to bank loan, however the data for growth of Chinese export is found in line with factoring growth.

Prof. Rhys Jenkins in 2018, in his book on “How china is reshaping the Global Economy” emphasized that strategic and commercial factors play very important role in fuelling exports from China. It is clearly justified that the factoring companies in china have grown in numbers to 2000 as per data of FCI Annual Review 2020, whereas, the estimated commercial factoring houses in china are more than 2500. Reference to data in table 4 and graph 4, it suggests that India is lagging far behind China both in terms of number of companies as well as extending finance for both domestic and international factoring.

6. CRITICAL REVIEW OF STATE OF AFFAIRS OF FACTORING IN INDIA AND CHINA

Based on reviews of comparative data about factoring of china, it clearly indicates that their manufacturing sector has taken a lead over their peers in Asia especially in the field of international factoring. In general, the manufacturing boost in China during the past several years stemming from the increased demand of Chinese goods in different geographic regions in the world has been a significant driver of growth in factoring. This is either the strength of factoring houses in China to supply the demand of domestic and international invoice factoring to manufacturers and traders enabling them to produce and meet global demand or this is due to the significant increase in debtor trade credit as a result of effective debtor management systems but the growth of two sectors of economy have been complementary to each other. This highly productive synergy of factoring houses, manufacturers and traders had a propelling effect on trade which made China stand ahead of its competitors not only in Asia but also has attained competitive advantage which is comparable to that of U.S around the world!

“ The legal framework for factoring in India has evolved after the enactment of The Factoring Regulation Act, 2011. As a matter of fact, India has a more comprehensive regime. The factoring companies have broadened their scope in terms of businesses covered. They have been servicing right from the traditional forms of factoring by operating notification arrangements to advanced options into diversified business segments.

In this regard, the critical evaluation of the state of slow pace of factoring business in India can be viewed in reference of periodical developments until June, 2020. For example, it was since 1988 when recommendations of committee appointed by RBI were accepted in year 1989, and were followed by issuance of guidelines in 1990 and then eventually, the subsidiary of SBI started operations in April 1991 as the first factoring company in India. It was almost after 20 years when Factoring Regulation Act, 2011 came into being. It also shows that the major gaps in factoring figures of India when compared to China call upon the regulators as well as stakeholders in India to revisit the reasons and communicate afresh that slow growth of factoring in India is not only due to lack of awareness, but there are other reasons too. This is important to consider if India really seeks to take competitive advantage of its abundant human and natural resources.

7. SUGGESTIONS

In view of the above findings, as well as in reference to publication Redd Asia, 2018 which highlighted that Chinese factoring market is expected to grow to over USD 3 Trillion in the future, there is no doubt that the potential for factoring is huge. Considering the gaps, a couple of things may be suggested in order for India to achieve the desired growth of factoring including a) the creation of a very strong debtor management culture and systems b) regulatory intervention for policy and provisions for Credit Insurance of domestic invoice factoring, c) enhanced budgets for making investments in knowhow by players and government, d) Spreading awareness as part of promotion of invoice factoring in MSME sector under the schemes of government of India for the development of manufacturing and trade sectors, e) Special Programmes and campaigns for how to execute a transaction, how to avail the facility of factoring of both types of sale-invoices i.e. domestic and export invoices, as well as legal, regulatory and fiscal framework etc.

Additionally, the growth of factoring needs removal of operational obstacles at the level of service providers and receivers in the untapped larger market of India which has high potential for invoice factoring companies to do business and attract asset class investment.

The use of Fintech, Blockchain and Artificial Intelligence for invoice factoring and tracking the credit scores of debtors by the factoring companies is expected to be transformative towards ease of doing business in India.

8. CONCLUSION

Small margins of profit help MSME to survive and slight disruptions due to financial stress lead them to shut down. Mere equity capital infusion and sub-debt options help them but are limited to the level of meeting requirements of funds for establishment and commencement of operations. During global economic slowdown not only MSME, but also large capitalized organizations have gone under financial stress. The accounts receivables, inventories and accounts payables are affected severely which break the chain of working capital flow. Therefore, to sustain, grow and compete in trade, the MSMEs need to utilize internal unused internal capabilities by exploring, understanding and using invoice factoring not as alternative, but as key source. They need to be educated and sensitized about the benefits of financing their significant portion of working capital through strategic approach of fund-based financing. Due to the impact of COVID-19 crisis which may go longer than estimated, the commercial lenders are expected to turn aggressively protectionist and ultimately reduce credit facilities. As the investors are keen to invest in this asset class, there is a need to kick-off and promote invoice and commercial factoring in India. This will help to enable SMEs to manage their working capital finance out of receivables without much depending and waiting for traditional supplies for their borrowing needs. Furthermore, it may also be concluded that India may consider COVID-19 period as an opportune time to revisit its trade financing strategy and exploit the opportunity to achieve the status of next leading country by producing cost effective manufacturing surplus in Asia with focus on using domestic factoring services in MSME, if not aggressively, then at least in a balanced manner. 

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Interview

9. Mr. Kishor Pradhan, CEO-Global Trade Consultancy Services, and Member of Banking Commission, ICC, Paris

Financing MSMEs for self-reliant India

MSMEs are an important cog in India's growth wheel. With the GOI's war-cry of becoming self-reliant for the fight against COVID-19, the MSMEs are looked upon with a lot of hope. However, the nationwide disruptions caused due to COVID-19 has also stalled the operations of the MSMEs. For a fresh start, there is a need for easy access to finance. Understanding the need of this hour, the author, in this article has attempted to discuss the various avenues through which funds can be raised by MSMEs and the recent initiatives by the GOI to ease flow of finance to the sector.



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Micro, Small and Medium Enterprises (MSMEs) are seen as the crucial element of self-reliant India, not so much because of the 30% contribution to the country's GDP, but because they can generate jobs, reduce dependence on imports, encourage domestic competition, and above all, MSMEs hold the key to entrepreneurial capital. Powering them to lead India's growth will certainly have to ensure that MSMEs are well-funded.

Ease and affordability of capital and credit are important for every business, but the focus changes the moment we move from large to small industry. Unlike larger companies, MSMEs do not have access to equity markets. Many MSMEs do not have strong financial statements, or formal means of credit assessment – hence, their access to bank finance is also often strenuous. It is sometimes easy to borrow against collateral, but linking working capital funding with hard collateral is to put up a tough bottleneck. If their credit assessment leads to either difficult access to credit, or the cost of credit is too high, that will affect their viability. Further, the solvency of MSMEs is often linked to some larger company at some end of the supply chain, as many MSMEs are often vendors to a larger company. This leads to a high level of concentration risk with their growth and solvency linked with a larger entity.

All factors put together, financing of MSMEs has not been easy. The suppliers of credit to MSMEs include banks as well as non-banking finance companies (NBFCs). The sharp growth of NBFCs¹ is a positive signal for MSME financing because many of NBFCs originate MSME loans, to land on the balance sheets of banks later, either by way of direct assignment, or securitisation.

¹ Credit by NBFCs grew at the rate of 16% during the FY 2019 as against overall credit growth of 15.2%. Source – Report of Trend & Progress of Banking in India 2019

Realising that it is working capital finance which should be the important element of MSME financing, it is important to create a market for alternative working capital sources such as invoice financing and factoring. The practice of discounting of negotiable instruments has been prevalent through decades; however, invoice financing has usually suffered due to lack of payment discipline as also the problem of fake or disputed invoices. If an invoice, once accepted, is presumed to be a promise to the world at large that the accepting entity is committed to honouring it on the stipulated date, then receivables financing may become easy on platforms such as P2P platforms, TReDS, or by way of factoring companies. However, the reality is that despite of the provisions of section 16 of the MSMED Act, India badly lacks a payment discipline and commitment to pay on the due date of an invoice. Hence, MSMEs have to depend on working capital funding, for financing both the build-up of inventories, as also trade receivables.

SOURCES OF FINANCE

There are two-types of finances currently available in the MSME segment –

a) traditional financing sources; b) non-traditional financing sources.

The major sources of traditional finance for MSMEs are:

1. Self-equity and from family, friends etc.
2. Debt from formal channels like banks, financial institutions etc.
3. Debt from informal channels like chit funds, registered or unregistered indigenous money lenders

The major sources of non-traditional finance for MSMEs are:

1. Leasing
2. Factoring
3. P2P invoice discounting or supply chain financing platforms

A study conducted by the International Finance Corporation, *Financing India's MSMEs*², suggests that almost 75% of the fund requirements are arranged in the form of debt from informal channels, 22% from formal debt channels and rest in the form of equity.

² <https://www.intellecap.com/wp-content/uploads/2019/04/Financing-Indias-MSMEs-Estimation-of-Debt-Requirement-of-MSMEs-in-India.pdf>

However, in the recent years, MSMEs have started exploring alternative form of funding such as leasing and factoring for meeting their fund requirements. In fact, the GOI has taken various initiatives to promote factoring as an active source of financing for the MSMEs, the same has been elaborated later on in this article.

It is worthwhile to discuss the various sources of finance and their inherent challenges and opportunities.

1. Equity : Self-equity is the easiest source of fund, however, it comes with limited availability. Self-equity usually includes equity put in by the entrepreneur(s) or arranged from their family, friends, acquaintances etc. Equity from external sources like venture capital funds, alternative investment funds etc. is available only to the start-ups and formalised entities, which is a rare phenomenon in the MSME sector. Needless to say, equity is the most costly source of funding, also leads to dilution of ownership, hence, external equity is not widely used in the MSME segment, leaving aside start-ups.

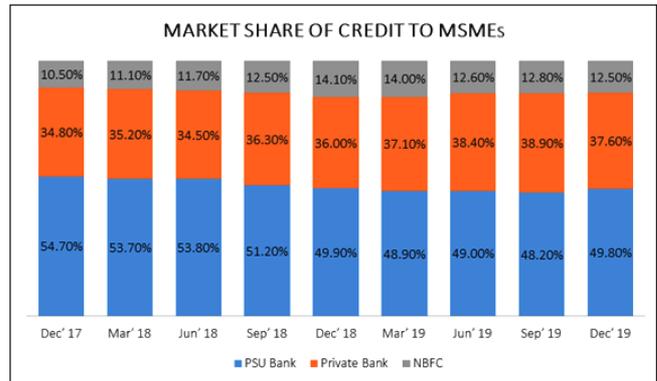
2. Debt from formal channels : Debt from formal channels refers to debt from banks and financial institutions. Only 22% of the total funding requirements are currently catered by this mode. Public, private sector banks and foreign banks represent the major part of it (almost 86%), and the rest is catered by the non-banking financial companies. The reasons for this difference are two-fold:

First, banks are guided by priority sector lending requirements, that is, at least a specified portion of their adjusted net bank credit has to be parked in the priority sector, and loans to MSMEs qualify as priority sector lending. This very same reason has also inspired various NBFCs to originate MSME loans, which are then acquired by the banks either through direct assignment or securitisation.

Second, owing to the growing attention from the government and the media, several banks are relocating their business strategy from financing corporates to financing MSMEs for growing their books.

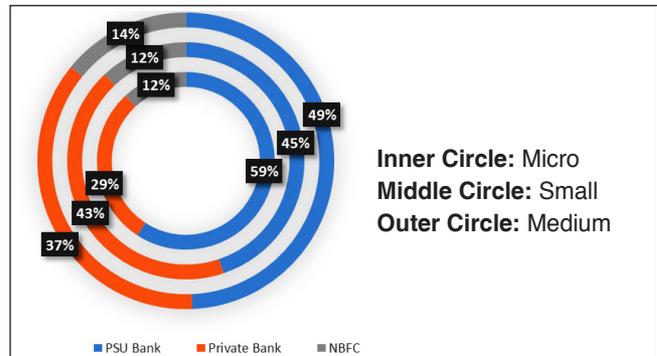
The credit flow to the MSMEs in India have been following³:

The public sector banks dominate the bank financing to MSMEs space. However, lately, the share of private sector banks have also been increasing. NBFCs also represent a measurable stake in the market. The Figure below shows the share of these three classes of financial institutions:



Source: MSME Pulse, April, 2020

Across the different types of MSMEs, i.e. micro, small and medium, public sector banks continue to dominate all three segments, however, private sector banks and NBFCs also enjoy their niche in some of the sectors. The figure below shows the share of each class of lenders in each of micro, small and medium enterprises:



Source: MSME Pulse, April, 2020

	Loan ticket size						Total	Growth
	Very small < ₹ 10 L	Micro 1 < ₹ 10 L – ₹ 50 L	Micro 2 ₹ 50 L – ₹ 1 C	Small ₹ 1 C – ₹ 15 C	Medium ₹ 15 C – ₹ 50 C	Large ₹ 50 C <		
	[Figures in INR Lakh Crores]							
Dec' 17	0.75	1.85	1.26	7.67	4.32	37.16	53.01	
Mar' 18	0.83	1.97	1.35	8.27	4.56	40.61	57.60	8.66%
Jun' 18	0.84	2.00	1.37	8.39	4.58	39.27	56.45	-2.00%
Sep' 18	0.84	2.05	1.41	8.54	4.65	42.68	60.17	6.59%
Dec' 18	0.89	2.20	1.50	8.91	4.79	43.35	61.63	2.43%
Mar' 19	0.92	2.26	1.55	9.16	4.95	46.00	64.85	5.22%
Jun' 19	0.89	2.22	1.52	9.04	4.82	46.30	64.80	-0.08%
Sep' 19	0.89	2.23	1.52	8.93	4.74	46.74	65.04	0.37%
Dec' 19	0.93	2.15	1.44	8.74	4.68	46.10	64.04	-1.54%
Jan' 20	0.88	2.17	1.46	8.72	4.51	46.72	64.45	

Source: MSME Pulse, April, 2020

³ https://www.sidbi.in/files/article/articlefiles/MSME-REPORT_Edition-9-April2020.pdf

“ Banks are guided by priority sector lending requirements, that is, at least certain portion of their adjusted net bank credit has to be parked in the priority sector, and loans to MSMEs qualify as priority sector lending. This very same reason has also inspired various NBFCs to originate MSME loans, which are then acquired by the banks either through direct assignment or securitisation.

Despite, the couple of strong reasons discussed above, debt supply from formal sector is still very low, which is mainly due to the fact that a large chunk of the segment is unorganised, where lack of proper documentation, lack of strong collateral, inherent risks in the business models keeps them out of the banking radar. However, recently, the NBFCs have been able to plug the gap to a large extent. With aggressive underwriting standards and strong collection and servicing process, NBFCs have over the years reached out to the unbanked customers.

3. Debt from informal channels : The third mode of finance for the MSMEs, the most important of the lot, is the debt from informal channels which include chit funds, registered or unregistered moneylenders, family, friends etc. The exact size of the sector is impossible to estimate as most of these loans go unreported.

Chit funds play a very important role. A study⁴ suggests that the almost 40% - 45% of the members of chit funds are proprietors or MSME owners. However, only a miniscule of the total fund flow from the informal sector comes from registered chit funds (1%), rest comes from unregulated sources.

Informal channels are mainstay sources of finance for the unregistered and unorganised MSMEs as most of the products are unsecured. Consequently, cost of funds charged by the lenders is also havoc.

In terms of advantages, easy and immediate availability of funds is the biggest advantage. However, in terms of disadvantages, high cost of funds, often as high as 200%, and unclear and unfavourable terms of lending are key concerns associated with these products.

Another, very common source of funds is debt from family or friends. This is a very convenient source of funds, as the funds are available almost immediately, without any collateral, at little or no cost. However, this works only where the demand is small, and is suitable for early stage businesses.

4. Leasing : An alternative source of funding, which has been existing in India, for almost fifty years now, yet has lost its prominence in the recent years. Leasing is a form of asset backed lending and an effective tool for financing the MSMEs, the reasons for which are manifold:

- a. **Title of the asset provides a better security :** Since, the title of the asset is retained by the lessor, this would work wonderfully for unorganised MSMEs, who are usually unregistered, making registration of security interest (in case of loans) impossible. Also, since the exposure is taken based on the asset, formal documentation of the lessee hardly matters – which is an idealistic situation for the organised MSMEs.
- b. **Lease may be cheaper than loans (in terms of monthly cash flows) :** Usually in a properly structured operating lease, the lessor takes an exposure on the residual value of the asset and therefore, recovers only a part of the cost of asset from the lessee. As a result, the monthly instalments are reduced.
- c. **Less of equity investment by the customer :** Usually, for an outright purchase of an equipment by a borrower, with the help of a bank finance, the MSMEs have to cough out a significant amount of equity as down payment. The proportion of this upfront payment is either zero or very low in case of leases.
- d. **Tax benefits :** In case of an operating lease transaction, the entire rentals are eligible as deductible expenses for tax purposes. Therefore, for taxation purposes, the entire cost of the lease is written down over a period of 3-4 years (tenure). Due to this, post-tax cost of the lessee comes down to an extent.
- e. **Wider access :** Currently, leases are offered by the NBFCs and other specialised leasing entities, who are believed to have a much wider outreach with much liberal underwriting standards than other formalised channels like banks. Often, vendors are also used a selling channels by the NBFCs. This also increases the degree of access to finance for the MSMEs.

Despite all the reasons, leasing penetration in the MSME segment continues to be low. A study⁵ conducted by Vinod Kothari Consultants for the International Finance Corporation suggests that lack of awareness and understanding of the products among the customers are the key reasons contributing the failure of leasing as a product in the MSME segment.

5. **Factoring :** Another very effective alternative financing product, which has gained prominence in the recent years is factoring. Factoring, also known as invoice financing/ discounting or receivables financing, has a gained a lot of traction after various initiatives were taken by the GOI . While leasing is usually used for long term finance, factoring is used mainly to meet short-term demands. Therefore, it is also a form of working capital finance. However, despite its presence for almost more three decades, factoring has not been upto the mark – reasons for which are varied like: lack of awareness about the product, perception of high cost, complications with respect to documentation etc.

⁴ <https://www.ifc.org/wps/wcm/connect/df9d09d-68ad-4e54-b9b7-614c143735fb/Financing+India%E2%80%99s+MSMEs++Estimation+of+Debt+Requirement+of+MSMEs+in+India.pdf?MOD=AJPERES&CVID=my3Cmzl>

⁵ https://www.ifc.org/wps/wcm/connect/098d9d0e-a553-4d2a-9b46-bf1701b19bf4/Evolution+of+Leasing+in+India_Aug+30+2019.pdf?MOD=AJPERES&CVID=mQ-Gi0B

6. Peer-to-peer invoice discounting or supply chain financing platforms : The latest addition to the list, peer to peer financing platforms adds a new age technique to fund raising by MSMEs. This is a combination of finance and technology. The platform act as aggregator, which brings together lenders and borrowers, mostly MSMEs. Interestingly, the lenders include banks, financial institutions and also retail investors like individuals. Once a borrower makes an application for finance, there are various ways in which the lenders can participate. While some platforms allow bidding by the lenders, some carries out an algorithmic matching. Usually the credit check of the borrower is done by the platform itself and it is based on that report, the lenders come forward to lend. With a bunch of such platforms coming up in the recent years, a large number of organised sector MSMEs now rely on these. Though the cost of these loans are typically much higher than bank rates, however, the easy process and quick turnaround compensates for the same.

GOVERNMENT INITIATIVES TO INCREASE FUND FLOW TO MSMEs

The GOI has undertaken a number of initiatives in the recent years in order to increase flow of funds to the MSME segment and some of them have been discussed below:

1. Priority sector lending norms : The priority sector lending norms for banks have played a huge role in developing the Indian economy over the years. The priority sector lending norms require the banks to invest 40% of their Adjusted Net Bank Credit (ANBC) to certain sensitive sectors. Loans to MSMEs qualify as priority sector lending. In fact, the Master Circular for the Priority Sector Lending – Targets and Classification⁶ also states that at least 7.5% of the ANBC or credit equivalent off-balance sheet exposures, whichever is higher, must be deployed in micro enterprises.

For the purpose of this Master Circular, the meaning of the term MSME has been drawn from the MSMED Act, 2006.

For service sector enterprises, bank loans over ₹ 5 crores in case of Micro and Small Enterprises and ₹ 10 crores in case of Medium Enterprises have been made ineligible for priority sector loans. The idea here is to prevent overleveraging of these entities with improved access of credit.

2. Promotion of TReDS : Trade Receivables Electronic Discounting System or TReDS has become a go-to place for the MSMEs for their working capital needs. TReDS are online exchanges where the MSMEs are connected with the lenders, willing to discount invoices of the MSMEs. This helps the MSMEs to access credit from banks and financial institutions, with the backing of their contractual receivables and resolve their issues with respect to their cash cycles. From the lenders point of view, this a convenient way of shifting the risk of taking exposure on a weak MSME to their stronger customers (who may be large corporates or PSUs).

In order to educate MSMEs and promote the usage of TReDS, the Ministry of Micro, Small and Medium

Enterprises issued a notification on 2nd November, 2018⁷ requiring all companies with turnover of more than ₹ 500 crores and Central Public Sector Undertakings to get themselves registered with the TReDS and ask their MSME vendors to use TReDS for financing.

Currently, there are three registered TReDS –

- Receivables Exchange of India Limited (RXIL) – A joint venture of SIDBI and NSE.
- A.TREDS Limited (Invoicemart) – A joint venture of Axis Bank and Mjunction Services.
- Mynd Solutions (M1 Exchange) – Set up by Mynd Solutions in 2015.

“ For service sector enterprises, bank loans over ₹ 5 crores in case of Micro and Small Enterprises and ₹ 10 crores in case of Medium Enterprises have been made ineligible for priority sector loans. The idea here is to prevent overleveraging of these entities with improved access of credit.

3. Several measures through SIDBI : Small Industries Development Bank of India or SIDBI is the apex financial institution for promotion and financing of MSMEs in India. The GOI, through SIDBI, has introduced various schemes for financing or ease of financing to MSMEs in India, namely –

a. Direct Financing : Here the SIDBI takes direct exposure on the MSMEs through a large range of products. In order to avail finance under these, the borrowers will have to fulfil certain eligible criteria attached to these product. The loans may or may not require collateral for financing and comes at considerably low cost (ranging from 5% - 12%) depending on the nature of the products.

The products include term loans, working capital loans, asset-backed loans for buying equipments, loans for rooftop solar devices, emergency credit line for restarting businesses in response to the disruption caused due to COVID-19.

b. Indirect Financing : Here the SIDBI offers refinancing facilities to NBFCs and banks extending credit to MSMEs. In addition to the refinancing facilities, SIDBI also has a scheme whereby it invests in the equity of small finance banks, which are primarily engaged in the business of financing MSMEs.

c. Aggregator platform : The SIDBI has launched an aggregation platform, where it brings together financiers and MSME borrowers and hand holding agencies, called the Udyami Mitra⁸. As per the website, currently, there are 1.25 branches of total 146 lenders mapped on the portal. For every application made by an MSME, the lenders get to compete for loan delivery.

⁶ https://m.rbi.org.in/Scripts/BS_ViewMasCirculardetails.aspx?id=9857#C2

⁷ <http://egazette.nic.in/WriteReadData/2018/191729.pdf>

⁸ <https://udyamimitra.in/>

d. **Fund of funds** – SIDBI has set-up three fund of funds schemes for indirect investments in the start-ups through AIFs or VCFs and they are:

a. **Fund of funds for start-ups**⁹ : This was introduced in 2016 as a part of Start-up India Action Plan. With an initial corpus of ₹ 10000 crores, the FOF makes investments in AIFs, which in turn, are required to invest, double the amount of investments made by FOF, in startups.

b. **Aspire**¹⁰ : Similar to FOF, Aspire also aims to invest in AIFs, which are required to invest in a specific direction. Aspire has been setup with a corpus of ₹ 310 crores with an intention to extend indirect finance in rural and agro sector and in early stage entities in the areas of innovation, entrepreneurship, forward backward linkage with multiple value chain of manufacturing and service delivery.

c. **India Aspiration Fund**¹¹ : This is yet another fund of funds, through which SIDBI and RBI, collectively, intends to invest indirectly in MSMEs through Category I and Category II AIFs.

e. **MUDRA**¹² : Subsidiary of SIDBI, Micro Units Development & Refinance Agency Limited or MUDRA, is a specialised agency for refinancing loans extended to MSMEs. There are three categories of facilities that it offers –

i. Shishu – For loans upto ₹ 50,000/-

ii. Kishore – For loans above ₹ 50,000/- and upto ₹ 5,00,000/-

iii. Tarun – For loans above ₹ 5,00,000/- and upto ₹ 10,00,000/-

f. **Guarantees through CGTMSE**¹³ : Another subsidiary of SIDBI, Credit Guarantee Trust for Micro and Small Enterprises or CGTMSE, is a specialised agency for extending guarantees to banks and financial entities against loans extended to MSMEs. The schemes offered by this entity are:

i. **CGS – 1**: Under this scheme, the trust extends guarantee to banks and NBFCs against loans to new or existing MSMEs, irrespective of whether registered or not, with or without collateral. Term loans and working capital facilities not exceeding ₹ 50 lakhs, where granted by regional rural banks and small finance banks and ₹ 200 lakhs, where granted by scheduled commercial banks and NBFCs.

ii. **CGS – 2**: Similar to CGS-1, however, this scheme has been floated specifically for NBFCs. Hence, only NBFCs can avail guarantee under this scheme.

g. **Interest Subvention Scheme**¹⁴ : Through this, the GOI, through SIDBI, extends 2% interest subvention

in case of loans extended to MSMEs having valid GST registration and Udyog Aadhar Number.

4. **Credit Linked Capital Subsidy Scheme for Technology Upgradation**¹⁵ : This scheme was set up with the intention to facilitate technological upgradation in MSEs by providing with an upfront capital support of 15% (on institutional finance of upto ₹ 1 crore availed by them) for induction of improved technology in the specified 51 pre-approved sub-sectors/ products.

5. **Emergency Credit Line Guarantee Scheme (ECLGS)**¹⁶: The GOI, as a part of the financial stimulus package announced by the Ministry of Finance in response to the disruption caused due to COVID-19. Under this cent percent guarantee coverage is to be provided by National Credit Guarantee Trustee Company Limited (NCGTC) for additional funding of up to ₹ 3 lakh crores to eligible MSMEs and interested MUDRA borrowers, in the form of a Guaranteed Emergency Credit Line (GECL) facility. In order to be eligible for this scheme, the following conditions are to be satisfied:

- The loan account is classified as standard, SMA-0 or SMA-1;
- They have an outstanding credit of up to ₹ 25 crores as on February 29, 2020; and
- The annual turnover of the MSME is up to ₹ 100 crores.

6. **Promotion of MSMEs in NE region and Sikkim**¹⁷ : Under this scheme, the focus is to provide financial assistance for carrying out the following activities in the NE region and Sikkim:

- a. Setting up new and modernizing existing Mini Technology Centres.
- b. Development of new and existing Industrial Estates.
- c. Capacity Building of Officers.

7. **Subordinated debt**: This was again part of the financial stimulus package in response to the disruption caused due to COVID-19. Under this package, GOI will facilitate provision of ₹ 20,000 crores as subordinated debt, to MSMEs which have become NPA or started showing signs of stress.

CONCLUSION

The article emphasises enough on the important of MSME segment in the overall setup of India's growth story and that the Government is taken a considerable number of steps in order to ease the fund flow in this segment. However, despite all the efforts, a significant part of this segment still remains unbanked and unorganised. It is very important to formalise these entities to accelerate growth in the segment.

As a solution, the Government has increased awareness campaigns to educate the entrepreneurs in the unorganised sector on the advantages of formalisation of business procedures. The Government has also structured certain subsidy schemes, the benefits of which can be availed only upon production of valid GSTIN and valid Udyog Aadhar Number. It is believed these measures will only strengthen the MSME segment and Indian economy as a whole. 

⁹ <http://www.sidbivcf.in/en/funds/ffs>

¹⁰ <http://www.sidbivcf.in/en/funds/aspire-fund-af>

¹¹ <http://www.sidbivcf.in/en/funds/iaf>

¹² <https://www.mudra.org.in/>

¹³ <https://www.cgtmse.in/>

¹⁴ <https://www.rbi.org.in/scripts/NotificationUser.aspx?Mode=0&Id=11803>

¹⁵ http://www.dcmsme.gov.in/schemes/Credit_link_Scheme.htm

¹⁶ <https://www.eclgs.com/>

¹⁷ <http://www.dcmsme.gov.in/schemes/Guidelines.07.8.19.pdf>

Nursing MSMEs - The growth engine of India

The world is battling with modern horrors like the COVID-19, which has left the human race befuddled and in the lurch and literally brought human activity on this globe to a standstill. The pandemic has taken over almost 213 countries and territories in its grip and is mounting a very serious threat to the global economy which was already in grave peril. There is no doubt that the Indian economy, which was sputtering pre-COVID, and growing at one of the lowest rates in the last six years, is now encountering a new set of economic challenges and has left many a sectors in tatters especially, the Micro Small and Medium Enterprises (MSMEs). This article, while discussing on to the repercussions brought in by COVID-19 to the MSME sector and the initiatives taken by the Government and Reserve Bank of India to surmount it, has also tried to throw light on the role played by MSMEs in the economy, pre-COVID challenges haunting the said sector, existing regulatory framework within which they function and suggestions to make them immune, to the extent possible, from such rude shocks in future.



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ROLE PLAYED BY MSMEs IN THE ECONOMY

MSMEs are amongst the strongest drivers of economic development, innovation and employment. The sector contributes in a significant way to the Indian economy and its growth, with a vast network of about 63.38 million enterprises, that add about 45% to manufacturing output, accounts for more than 40% of exports, over 28% of the Gross Domestic Product (GDP), while creating employment for about 111 million people, which in terms of volume stands next only to agricultural sector. It is exceedingly, heterogeneous in terms of size of the enterprises and variety of products and services, and levels of technology employed.

EXISTING CHALLENGES PLAGUING THE MSME SECTOR

- Delayed payments and reticence to enforce their legal rights due to the low bargaining powers.
- No single window registration and network of multiple requirements such as Udyog Aadhaar portal, Goods and Services Tax Network (GSTN), National Small Industries Corporation (NSIC), et al, leading to cumbersome

registration process, duplication of efforts and profligate of resources and time.

- Inadequately equipped in areas such as tool rooms, innovation centers, testing facility, etc.
- Lack of expertise in product development, technology adoption and marketing strategy.
- Lack of knowledge around capacity building and upskilling.
- Lack of wherewithal to cope with situations like natural calamities, such as multiple cyclones and earthquakes that have recently hit India, in the absence of active insurance coverage to its employees, on the lines of Pradhan Mantri Suraksha Bima Yojana (PMSBY) and Pradhan Mantri Jeevan Jyoti Bima Yojana (PMJJBY) schemes.
- Non-coverage of the workers at urban and rural formalized Micro & Small Enterprises (MSEs) under Ayushman Bharat Scheme or Pradhan Mantri Jan Arogya Yojana (PM-JAY).

COVID-19 PANDEMIC AND ITS IMPACT ON THE MSME SECTOR

COVID-19 pandemic has further compounded the woes of the already struggling MSME sector, as the country was forced to go into a lock down, commencing from 24th March, 2020 till 31st May, 2020. Albeit, limited activity was allowed to be carried out after 20th April, 2020, but that didn't help much in uplifting the overall confidence of MSMEs, as it came with stringent caveats.

However, by the time unlocking began in a partial way from 8th June, 2020, COVID-19 pandemic was successful in digging a hole in the MSME pockets, which became a herculean task to surmount. Some of the imminent challenges faced by the sector are being deliberated below:

- **Liquidity crunch faced due to lock down imposed for containing the pandemic**

Already reeling under the shock from the implementation of Demonetization and introduction of Goods and Services Tax (GST) in 2016 and 2017, respectively, the



COVID-19 pandemic will further lead to serious loss of market share from smaller and unorganized players to the bigger organized / MNCs, because of the lack of access to the smaller and unorganized firms to the low-cost institutional funds and technology. On the other hand, organized companies will be able to cut down on cost and their working capital cycle. In addition to this, the cost of compliance, regulation and taxation which was already on an upward spree, is all set to further increase, due to the unpropitious situation created by this pandemic, leading to further worsening of the much needed liquidity required to keep the sector buoyant.

- **Reverse migration of labour**

“As with many of these workers going back to their native places, even businesses operating in the organized sector found it arduous to resume work, even if they want to”.

COVID-19 pandemic affected the workers “mentally, physically, financially and emotionally”, since many were stuck in the cities and in industrial belts far away from their native places, with no jobs and even ran out of their savings. The horrifying scenes of them bundling up in trucks, setting out on foot and even sleeping on railway tracks leads us to believe that those who managed to reach their native places after enduring such hardships are unlikely to come back anytime soon. This would lead to a medium term shortage of semi-skilled and skilled labour.

- **Future of Work and Production**

Since it would be difficult to find migrant labour returning to work soon, it means most of the MSMEs would have to invest substantially, in reskilling the existing labour and also need to provide them with a clean sanitized shelter for living, obviously escalating the cost of production and thinning their already depleted margins.

- **Inability to contain the fixed cost, while revenue taking a nose dive**

The choking of supply chain due to lock down saw the revenue taking a nose dive, while the burden of

fixed costs and wages remained static with monthly instalment for repayment of existing debts, eroding the strained profitability. Also, too many directives from the government, made the MSME sector wary of laying-off the excess workers, due fear of retrograde steps from the trade unions. Worsening the situation further, was the government directive to the establishments for “mandatory payment of wages to the employees during the lock down period”, endangering survival and solvency of MSMEs. However, on the other hand, despite few state governments advising the landlords to postpone the rent collections from the tenants by at least three months, such advisories hardly materialized into actual reliefs.

So to overcome the above challenges and to soften the impact of the blow caused by COVID-19, several initiatives were taken by the Government and Reserve Bank of India. However, before discussing on to the same, let’s first understand the key relaxations / benefits enjoyed by the MSMEs under the existing regulatory framework.

- **MSME Act, 2006, rules made thereunder and other laws**

1. **Protection against Payments**

Understanding the ambiguity lying with business revenues, the Government has extended a helping hand by providing a layer of protection against payments. As of now, the Ministry of MSME, has given business owners and enterprises to collect interest on payments delayed by the buyer.

Under the MSME registration benefits, a buyer is expected to make a payment for the goods / services within 15 days of the purchase. If the buyer delays, the payment for more than 45 days, the enterprise is eligible to charge compound interest which is 3 times the bank rate specified by Reserve Bank of India.

2. **Interest on Delayed Payments**

Where any buyer fails to make payment to the supplier as per Section 15—interest is to be paid under compound interest with monthly rests at three times of the bank rate as specified by Reserve Bank of India.

3. Reporting

A buyer has to mandatorily disclose the unpaid amount with interest in the notes to account forming part of the annual financial statements.

4. Deductibility of Interest

The interest payable to MSME on account of delays would not be a permissible deduction under the Income Tax Act.

5. Dedicated Portal for settlement of disputes

It contains the provisions to address delayed payments. The most important among these, is that state government have to establish Micro and Small Enterprise Facilitation Council (MSEFCs) for settlement of disputes after MSMEs have filed claims. Launched in October 2017, the SAMADHAN portal brings MSEFCs online. Currently Buyers are mandated to make payments to suppliers within 45 days of accepting goods and services. In case of failure of payments, every case filed with the MSEFCs shall be decided within a period of 90 days from the date of making such a reference.

“ Understanding the ambiguity lying with business revenues, the Government has extended a helping hand by providing a layer of protection against payments. As of now, the Ministry of MSME, has given business owners and enterprises to collect interest on payments delayed by the buyer.

7. Additional Reporting Requirement by Ministry of Corporate Affairs for companies delaying payments to MSME

All companies, who get supplies of goods or services from a MSME and whose payments to MSME suppliers exceeds 45 days from the date of acceptance or the date of deemed acceptance of the goods or services as per the provisions of section 9 of the MSME Act, shall submit a half yearly return i.e. 30th April (for October to March) and 31st October (for April to September) to the Ministry of Corporate Affairs, stating the amount of payment due and the reasons for non-payment/delay.

8. 25% Government Procurement

The Public Procurement Policy for MSMEs has mandated that every Central Government Ministry/ Department/Public Sector Undertaking (PSU) shall set an annual goal of minimum 25 percent of the total annual purchases from the products or services produced or rendered by MSEs.

9. Collateral Free loans from banks

The Credit Guarantee Fund Scheme (CGS) for MSEs was launched by the Government of India to make available collateral-free credit to the MSEs. The

Ministry of MSMEs, Government of India and SIDBI, established a Trust named Credit Guarantee Fund Trust for Micro and Small Enterprises (CGTMSE) to implement the Credit Guarantee Fund Scheme for MSEs. As a result, the Bank loans has become cheaper as interest rate is lower by 1%. However, this would vary from bank to bank.

10. Concession in Electricity bills

Registered MSMEs are eligible for concession on electricity bills, and the same can be availed by making application to electricity department along with MSME Registration Certificate.

11. 50 % discount on Trademark/ Patent registration

Reduced fees, up to 50% on Trademark / Patent registration, using MSME / Udyog Aadhaar Registration Certificate.

12. International Organization for Standardization (ISO) Certification Reimbursement

Reimbursement of ISO certification charges upon specific application.

13. Access to Trade Receivables Discounting System (TReDS) platform

TReDS is an electronic platform for facilitating the financing / discounting of trade receivables of MSMEs through multiple financiers. These receivables would be due from corporates and other buyers, including Government Departments and PSUs.

14. Takeover of MSMEs

The promoters of MSMEs are allowed to bid for their companies, during the Insolvency Proceedings to take over a Company; this window is not available for other companies.

15. Reduced Rate of Corporate Direct Tax

The Corporate Tax Rate was slashed to 22% from 30% for existing companies, and to 15% from 25% for new manufacturing companies.

16. Other government schemes announced from time to time

There are other multiple government schemes like the Quality Management Standard and Quality Technology Tools, Incubation scheme (government funds 80% for unique ideas), Credit Linked Capital subsidy scheme (for upgradation of technology in business), Women Entrepreneurship etc.

However, the above benefits, which MSMEs enjoyed during the pre-COVID era, were found to be highly inadequate to survive the COVID-19 shock. Hence, the Government and Reserve Bank of India, proactively, took bold and out of the box initiatives to help mitigate and reduce the impact of the unique

difficulties faced by the MSMEs. Some of those initiatives are highlighted below:

RESERVE BANK OF INDIA THROUGH SERIES OF PRESS CONFERENCE:

27th March, 2020

Repo rate reduction to 4.4%, which will stimulate on-lending to productive sectors rather than Banks stashing cash with RBI. This is significant in the wake of the fact that this is the lowest ever repo rate. The previous lowest repo rate was 4.74% 13 years ago, in April 2009, amidst the global financial crisis.

Loan moratorium: All lending institutions have been permitted to offer a 3-month moratorium from 1st March, 2020 to 31st May, 2020 on payment of instalments on all term loans. Availing the moratorium option and deferment of the payment of interest on working capital loans would not tantamount to default and the borrower's credit bureau report would remain unaffected.

17th April, 2020

In order to encourage banks to deploy the surplus funds in investments and loans in productive sectors of the economy, RBI further reduced the reverse repo rate by 25 basis points from 4.0% to 3.75%.

22nd May, 2020

It further extended the moratorium on loan repayments by another three months from 1st June to 31st August, 2020, while also cutting the repo rate further by 40 basis points to 4.0% after an unscheduled meeting of the Monetary Policy Committee.

GOVERNMENT OF INDIA, THROUGH FINANCE MINISTERS ANNOUNCEMENTS

Definition- A new definition for MSMEs has been introduced in the Atmanirbhar Bharat Abhiyaan Package announced by the finance minister on 13th May, 2020, raising the investment limit and eliminating the distinction between manufacturing and service sectors.

This new definition is a composite one (i.e. both limits need to be satisfied).

Enterprise	Investment	Annual Turnover
Micro Enterprises	Less than ₹ 1 crore	Less than ₹ 5 crores
Small Enterprises	Less than ₹ 10 crores	Less than ₹ 50 crores
Medium Enterprises ¹	Less than ₹ 20 crores	Less than ₹ 100 crores

¹ The definition of MSME was immediately, amended by a subsequent cabinet note released within a week, increasing further the size of the medium enterprises, by enhancing the current limit of investment from ₹ 20 crores to ₹ 50 crores and that of the annual turnover from ₹ 100 crores to ₹ 250 crores.

ADDITIONAL RELIEFS PROVIDED TO MSMEs IN THE ATMANIRBHAR BHARAT ABHIYAAN PACKAGE

1. A collateral free automatic emergency credit line of ₹ 300,000 crores has been allowed to business/MSMEs from banks and non-banking finance company's (NBFCs) up to 20% of their entire outstanding credit as on 29th February, 2020. Business / MSMEs eligible are those having outstanding loans up to ₹ 25 crores and a turnover of up to ₹100 crores. These loans, disbursed by banks or NBFCs will get 100 percent credit guarantee by the government (without any fee), will have a 4 year tenor, a cap on interest rate and a moratorium of 12 months.
2. Non-performing and stressed MSMEs to get about ₹20,000 crores liquidity as a subordinate debt. Banks to provide subordinate-debt to promoters equal to 15 percent of their existing stake subject to a cap of ₹ 75 lakhs.
3. Equity infusion of ₹ 50,000 crores through a fund of funds for MSMEs with a corpus of ₹ 10,000 crores by the Government of India. The fund will operate through a mother fund, which would help to expand MSME size as well as their capacity. It may encourage MSMEs to get listed on main board of Stock Exchanges.
4. Dues by government and public sector undertakings to MSMEs will be released within 45 days.
5. As a replacement to trade fairs and exhibitions, e-market linkage for MSMEs will be promoted.
6. In order to protect the MSMEs from unfair competition from foreign companies, the Central Government has decided to take a major step towards self-reliant India by disallowing Government procurement tenders up to ₹ 200 crores for foreign companies, this step would give major boost to medium enterprises in India which faces tough competition at the hands of foreign players.

GOVERNMENT OF INDIA THROUGH CIRCULARS AND NOTIFICATIONS

a) Contribution by the Government towards Employees Provident Fund Organization (EPFO)

The Central Government decided to come forward and contribute employer and employee contribution (12 percent each) towards Provident Fund for three months (during the COVID period). The aforesaid contribution would be made to EPFO, so that nobody suffers due to loss of continuity in the EPF contribution. This relief is, however, available only for the establishments employing up to 100 employees and 90 percent of whom earn under ₹ 15,000 as monthly wage.

Also vide notification dated 18th May, 2020, it notified the cut in Employees Provident Fund (EPF) contribution by employees and employers to 10 per cent from the existing 12 per cent. The cut in EPF contribution will be applicable for the months of May, June and July 2020. This measure,

in effect, would lead to increase in the take home pay or the cash-in-hand of the employees, while reducing the employee cost for the employer.

b) Insolvency and Bankruptcy Code (IBC)

Minimum threshold to initiate the Insolvency proceedings was raised to ₹ 1 crore from ₹ 1 lakh, and suspending the new initiation of Insolvency proceedings for 1 year, which would largely insulate the MSMEs from liquidity crisis, and give them time to recover and honour their obligations.

Also in the working, is a special insolvency resolution framework under Section 240A of the IBC, which would be specifically applicable to MSMEs.

Given the bold and immediate measures taken to address the damage done by the pernicious COVID-19, there were some obvious downfalls which are being discussed below:

● MSME Definition based on Turnover and Investment

The revised definition of MSME doesn't reflect the true intention behind the law for MSMEs. The main reason for it is that the new definition requires the entity to fulfil two criteria viz.: Investment and Turnover in order to be classified as MSME.

The definition of MSME would have carried much more weight, if its criteria had been based only on turnover basis, due the following reasons:

- Many industries are capital intensive in nature. They require fairly big investment in plant and machinery but still make moderate turnover. Such industries will be deprived of all benefits being offered to MSME, despite the fact that their turnover is within the criteria of new definition.
- There are apprehensions that the entities engaged in making components for Nuclear power, defence, Indian Space Research Organisation, etc. will not be able to avail the benefits of MSME, as they generally do not have huge turnover, but has large capital investments to meet stringent requirements and complex manufacturing / processes. All those entities are providing critical components to various end user segments and giving precision quality and generating employment for lakhs of employees.

Such entities, with good machinery and latest technology, are working for import substitution and have a good export potential. They are the backbone of 'Make in India' campaign in true spirit.

- The banks, in general, extend credit against security in terms of investment in land and buildings and plant and machinery. Where entities have large investments in plant and machinery due to its very nature (but still meeting turnover criteria), will not be able to register as MSME under new definition due to investment in plant and machinery exceeding the

threshold. It will also have direct consequences, leading to increase in non-performing assets and lesser chances of resolution. As such companies will not be able to avail benefits of section 29A and 240 of IBC, giving promoter of MSME, a chance to become resolution applicant. This will be a huge blow to such small and medium entities, facing insolvency as they generally are unable to fetch interest of prospective resolution applicants, due to size constraints. This will lead to forced close down jeopardizing the interest of all stakeholders.

- The turnover reflects the true nature of size of the entity. Moreover, it's easily reconcilable with GST returns. This will help all the MSMEs in getting the registration easily and will also provide a good check point for verification of registration by the Government of India, so that no entity, which does not qualify for registration would claim undue benefits under the MSME schemes by registering.

● The Smaller among the Medium Enterprises to face competition

Further, due to the enhancement of limits in the medium category of MSME's, there's a likelihood that the smaller among the medium enterprise will now have to struggle harder to face tougher competition from new and larger companies, that would now be classified as medium enterprises under the enhanced limits.

● Gap still large between the Medium Enterprises, when compared with the developed economies

Despite the manifold increase in the size of the medium enterprises, when compared with the MSMEs of the developed economies, like Germany or South Korea, they are still far behind. The turnover limit for MSME units in Germany or the European Union ranges between ₹ 17 crores and ₹ 427 crores. In South Korea, there are different slabs for such units, but all of the investment limits are much higher than the revised Indian definition. These limits range between ₹ 300 crores and ₹ 1,130 crores. Definitely, the size gap has been reduced in comparison with the above countries, but it's still quite large.

● Suspension of IBC

Suspension for a year, will have a downside for those MSMEs, which would like to voluntarily opt for a resolution plan (by the promoters) to revive the company.

● Increased Indebtedness

The sector being one of the most indebted, further loans as per the Atmanirbhar Bharat Abhiyaan Package, would only add up to this. There are also worries, that banks might not freely lend, but instead use the credit guarantees to bail themselves out.

Having said so, the current "duo" package from Government of India and the Reserve Bank of India, will not only help

the MSME's to compete domestically, but also cement their positions internationally. Further, it will also help support in achieving the goal of India to become "Self Reliant" as envisaged under the Atmanirbhar Bharat Abhiyaan Package.

The CRISIL SME TRACKER² Report Titled- "Atmanirbhar Bharat Abhiyaan Package" offers MSMEs short term respite" quotes that:

"The 3.5 trillion package for MSMEs can potentially increase credit to MSMEs by 18-19 per cent given that banks and other financiers lent around ₹18-19 trillion to the sector in 2019-20. Actual disbursements, however, will also depend on the new MSME classification. While this will cushion the impact of the blow from the Covid-19 pandemic by addressing the short-term liquidity crunch MSMEs are facing, risks loom beyond the current financial year."

Also, as per the revised MSME definition³, nearly 70% of the listed companies will now fall within the ambit of MSME category. With this, they would become eligible for the government benefits. Of the 4,643 listed companies for which data was available with corporate data provider Capitaline, around 20 per cent, would fall within the definition under the turnover limit for medium enterprises, another 19 per cent would fall under small, and 30 per cent under micro enterprises.

As the saying goes "never waste a good crisis", there are plenty of other measures, which should be ruminated and acted upon to strengthen the fundamentals of MSMEs, in long run. Some of those are:

- Targeted upgradation of norms relating to bank loans, cash flows, and GST refunds.
- Expedite the duty drawback payments stuck in the government coffers.
- GST refundable from the government or recoverable from sales billing should be financed by the banks, while instalments of term loans payable next year should not be classified as a current liability.
- Further reforms in four "L"s, land, labour, law and liquidity, to provide impetus to accelerate growth.
- For the states that account for the bulk of the migrants, this unprecedented reverse migration imposes extraordinary challenges of absorbing them without causing social subversion. But if seen differently, this would offer those states an opportunity to become India's new manufacturing hubs.
- Support from the Government, in terms of sharing the part burden of payment of salaries to the workers, belonging to the beleaguered MSME sector.
- While the need to unleash the power of land was never in doubt, the coronavirus crisis has given us an opportunity to make it happen now. There is a lot

of land that has already been collateralized in the formal financial system, with no clear estimate of the amount of land that has gone through the financial system, but it would be somewhere around 1/3rd of the monetisable land. This means that we already have a large part of our land bank for which some kind of due diligence has already been done by the Banks and NBFCs. Can we start with these for our exercise? Can we think of incentivizing the formal financial institution to create a land register document with all the relevant information including the strength of the title? In essence, the proposal is to leverage land records that are already relatively clean to build a system around, rather than force a top-down approach to clean up all land records as has been the case until now. By incentivizing the financial system to spearhead this transition and the borrowers to seek it on their own, we could avoid problems that have plagued such land reforms before.

- Referring to the ₹ 3 trillion government guaranteed loans to MSMEs, what would have been more fruitful to both banks and MSME borrowers, is an interest rate waiver or subvention scheme or a mix of both by the government. In case of the interest waiver scheme, even if the government had borne the entire cost for the first year, it would mean a guesstimated outgo of ₹28,500 crores (assuming the entire ₹ 3 trillion is disbursed).

Of course, it would also have used other options like keeping the SBI's one-year deposit rate-5.7 percent-as benchmark and paid a premium over it. Or, an interest rate subvention scheme, like the Prime Minister Awas Yojana, and created slabs with interest rate subvention of 4-5 percent. The cost would have been limited to just ₹ 15,000 crores. In the process, some banks would have to forego some margins, but the assurance of a steady interest income at least in the first year, along with government guarantee over the four year period, would give them more confidence that they are not throwing more good money after bad money. And all this would have been achieved at less than 0.1-0.5 per cent of the GDP in the first year.

CONCLUSION

Given the above initiatives and policy reforms, the net impact on the MSME sector, of the new measures taken by the Government and Reserve Bank of India is expected to be positive. It is estimated that, the current changes have the ability to enhance the contribution made by MSMEs in percentage terms to GDP, which in turn will have a positive contagion effect on the employment generation and further bolstering the domestic consumption. The Government also has made its intentions clear, that it plans to raise the MSMEs contribution to India's export to 60% from the present 48% and also boost the sector's contribution to the country's GDP from 29 % currently to 50%. *MSMEs are the arteries of the economy. Revival of their "animal spirits" is now urgently due.*⁴

² Published in Business Standard on 26th May, 2020

³ Capitaline, Business Standard calculations published on 3rd June, 2020

MSME Sector: Government Initiatives and Recent Changes

Micro Small and Medium Enterprises (MSMEs) play a major role in the development of Indian economy in terms of GDP, employment generation as also forex earnings. The Government has been taking a number of steps through campaigns such as “Make in India”, “Vocal for Local” and now recently “Atmanirbhar Bharat” in the wake of COVID-19. The Government has also amended the criteria for “Micro, Small and Medium” in the framework of Micro, Small and Medium Enterprises Development Act, 2006 with effect from July 01, 2020, in response to long pending demands from MSME associations.



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The MSME sector, often considered the bulwark of the economy, with more than 60 million units are spread across the geographical area of the country. MSMEs are major contributors in:

1. Employment generation, employing over 120 million in rural and urban area.
2. GDP of the country, about 30% in manufacturing and service sector. Recently Ministry of MSME proposed to increase this share to 50% by 2025 when Government is targeting to reach \$ 5 trillion economy.
3. Exports of the country, about 45%.

Collectively MSMEs are playing a very large role in the development of the Indian economy. It promotes inclusive growth by providing employment opportunities to people belonging to weaker sections of the society and thus help in achieving balanced socio-economic growth. They also impart resilience to ward off economic shocks and adversities. However due to their fragmentation and spread across both urban and rural areas of the country, MSMEs are not well organised and their individual contribution is not recognised. In order to strengthen MSMEs, the Micro, Small and Medium Enterprises Act was enacted by the Parliament in the year 2006. The Vision, Mission and Functions of Ministry of MSME are:

VISION

Sustainable development of globally competitive Micro Small and Medium Enterprises as an engine of growth for the Indian economy.

MISSION

Promote growth and development of MSME including Khadi, Village and Coir industries so as to create new enterprises and more employment opportunities. The long term goal of the Ministry is to enhance manufacturing base in the country by improving performance of MSMEs through skill and entrepreneurship development

FUNCTIONS

- Facilitation and credit flow to MSMEs
- Improving competitiveness of MSMEs
- Improve manufacturing base through upgradation of technology
- Promotion of MSMEs through cluster bases approach
- Marketing support to MSMEs
- Skill development and entrepreneurship development training
- Creation of new Micro Enterprises through Prime Minister's Employment Generation Program (PMEGP)
- Growth and development of Khadi and Village Industries (KVI) sector
- Growth and development of Coir Industry

The full potential of the MSME sector is still untapped. To achieve high growth of Indian economy, this sector needs more attention of the Government. It is in this context that the Government of India is putting concerted efforts for holistic development of MSMEs in key areas like human capacity development, knowledge services, access to finance, technology, infrastructure, market access and ease of doing business. Government is driving a movement of “Made in India” and “Vocal for Local” campaign and MSME sector is expected contribute a lot in this campaign. From time to time Government of India announced various measures for the growth of MSME and offered various schemes and promotional policies. Some important measures are:

1. **Specialised MSME funding institutions:** Availability of credit to MSME is always a matter of concern for its growth. Small Industries Development Bank of India (SIDBI) was set up by the Government of India for the financial assistance, directly and indirectly, to the MSME units only. It is a dedicated and specialised financial institution primarily to cater to the long-term fund requirement of the

project in MSME and recently SIDBI is considering to offer working capital finance also.

Also, most of the Scheduled Commercial Banks have established separate MSME cell and branches to meet the requirement of MSME sector and have framed liberal credit policies.

- 2. Udyog Aadhaar Registration:** All MSMEs are required to obtain Udyog Aadhaar Memorandum (UAM) once they commence the production. The registration process is simplified. UAM is a unique 12-digit Government identification number issued by the Ministry of MSME for all Micro, Small and Medium Enterprises. These entities are registered online through this process as MSME with their Aadhaar Card Number. An enterprise is required to mention the date of commencement of production in the online application form. Therefore, it is advisable that the unit shall obtain Udyog Aadhaar Memorandum only when it commences the commercial production. No UAM should be obtained during project implementation.



- 3. Credit Guarantee Fund Trust for Micro and Small Enterprises (CGTMSE):** Banks while lending to MSMEs, invariably insist for the collateral security in addition to prime security. Many of the first time entrepreneurs find it difficult to meet this requirement. To address the issue, Government of India and SIDBI had set up Credit Guarantee Fund Trust. The main objective of the Trust is that the lender is expected provide credit facility, term loan and/or working capital loan, purely on the primary security without any additional collateral. If any Micro / Small enterprise fails to discharge its liabilities to the lender, the Guarantee Trust would make good the loss incurred by the lender up to 50/75/80/85 percent of the credit facility as per the Scheme. The maximum loan amount considered for sanction under the scheme should not exceed Rs. 200 lakhs. Medium scale industries are not covered under this scheme.
- 4. Delayed Payment to Micro and Small Enterprises:** Under the MSME Development Act, 2006, buyers are required to make the payment to Micro and Small Enterprise (MSE) suppliers as per the agreed terms or within a period of 45 days from the date of supply, whichever is earlier. In no case, the credit period shall be beyond 45 days. Any delay in payment attracts heavy interest. Each of the States have been directed to form Micro and Small Enterprise Facilitation Council (MSEFC) to consider the cases of delayed payments and to facilitate recovery. The government has also launched an online

delayed payment monitoring system called the MSME Samadhaan to facilitate ease of filing an application under the MSEFC. Any MSE having a valid Udyog Aadhaar Memorandum (UAM) can make an application via this portal.

Ministry of Corporate Affairs made it mandatory for every company incorporated under the Companies Act, 2013 to file half yearly return for the outstanding to MSE for more than 45 days. All these measures are helping Micro and Small enterprises for the timely recovery of their dues. However Medium scale industries are not covered under this regulation.

- 5. Launching of Government e-Marketplace (GeM) portal:** The Government e-Marketplace (GeM) is a government run e-commerce portal established in 2017 replacing Directorate General of Supplies and Disposal (DGS&D), a nodal purchase organisation of the central government. GeM enables easy online procurement of the common goods & services that are needed by various Government Departments, Organizations and PSUs. It provides transparency in procurement and facilitates MSMEs to directly reach out to the buyers.
- 6. Public Sector Procurement Policy:** All public sector companies are directed to compulsorily procure 25%, of their total purchases from Micro and Small enterprises and also to offer price preference upto 15%.
- 7. Trade Receivables e-Discounting System (TReDS):** In order to ensure seamless cash flows to MSMEs, the RBI, in 2014, allowed setting up of TReDS. TReDS is an electronic platform for facilitating the financing / discounting of trade receivables of MSMEs through multiple financiers. These receivables can be due from corporates and other buyers, including Government Departments and Public Sector Undertakings.

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- 8. Credit Linked Capital Subsidy Scheme (CLCSS):** CLCSS is operational for upgradation of technology for Micro and Small enterprises only .The objective of the Scheme is to facilitate technology up-gradation in MSEs by providing an upfront capital subsidy of 15 per cent of the cost of eligible machines subject to maximum of Rs. 15 lakhs. CLCSS is available to new as well as to units undertaking expansion who have acquired machines duly approved under scheme guidelines.
- 9. Lean Manufacturing Techniques:** Financial assistance is provided for implementation of lean manufacturing techniques to enhance the manufacturing competitiveness of MSMEs.

10. **Zero Defect Zero Effect:** Financial support to MSMEs in ZED (Zero Defect Zero Effect) certification to improve quality of products.
11. **Subsidy for Product Certification Licenses:** Government provides subsidy towards the expenditure incurred by enterprises to obtain the product certification licenses from national and international bodies.
12. **National Manufacturing Competitiveness Programme (NMCP):** NMCP has been set up to develop global competitiveness among Indian MSMEs by improving their processes, designs, technology and market access.
13. **Micro & Small Enterprises Cluster Development Programme (MSE-CDP):** MSE-CDP adopts cluster development approach for enhancing the productivity and competitiveness as well as capacity building of MSEs.

NEW DEFINITION OF MSME

As per new definition, Manufacturing and service enterprises are now divided into four major categories. They are:

1. Micro Enterprise
2. Small Enterprise
3. Medium Enterprise
4. Large Enterprise

First three categories are known as MSME sector and defined in Micro, Small and Medium Enterprises Development Act, 2006. By notification dated 1st June, 2020, with effect from 1st July, 2020, the Ministry of MSME, Government of India has revised the definition MSME. The existing (prior to 1st July 2020) and revised (with effect from 1st July 2020) definition is as under:

MSME classification prior to 1st July 2020

Criteria: Investment in Plant and Machinery or Equipment			
Classification	Micro	Small	Medium
Manufacturing Enterprises	Investment <Rs. 25.00 lakhs	Investment <Rs. 5.00 Crores	Investment <Rs.10.00 Crores
Service Enterprises	Investment <Rs. 10.00 lakhs	Investment <Rs.2.00 Crores	Investment <Rs.5.00 Crores

New MSME classification with effect from 1st July 2020

Composite Criteria: Investment in Plant and Machinery or Equipment and Ceiling on Annual Turnover			
Classification	Micro	Small	Medium
Manufacturing and Service Enterprises	Investment <Rs. 1.00 Crores and Turnover < Rs. 5.00 Crores	Investment <Rs. 10.00 Crores and Turnover < Rs. 50.00 Crores	Investment <Rs. 50.00 Crores and Turnover < Rs.250.00 Crores

There was a long pending demand for the upward revision of the investment limits from the various MSME associations

since it was last defined in the year 2006. It was also observed that many MSME units are not undertaking expansion on the fear of losing of the benefits of MSME status and thus inhibiting their growth. The upward change in the definition is widely welcomed by the industries associations and will encourage MSME to grow. In earlier definition, different investment limits were prescribed for manufacturing and service sector. Under the new definition, distinction between service and manufacturing is eliminated. However the annual ceiling on the turnover is prescribed. If the turnover of the MSME exceeds the limits prescribed, it stands to lose the benefits enjoyed by the enterprise in that category.

Ministry of MSME, vide its notification dated 26th June 2020, notified certain criteria for classifying the enterprise as MSME, these are:

1. To obtain 'Udyam Registration Certificate' on line in the Udyam Registration Portal based on self declaration w.e.f. 1st July 2020. It will replace the existing Udyog Aadhaar Memorandum. All existing units shall be required to register on the new portal on or after 1st July 2020.
2. Export of Goods and Services shall not be counted for the purpose of turnover as mentioned above and information on turnover shall linked to the Income Tax Act /Goods and Service Tax Act.

“ There was a long pending demand for the upward revision of the investment limits from the various MSME associations since it was last defined in the year 2006. It is also observed that many MSME units are not undertaking expansion on the fear of losing of the benefits of MSME status and thus inhibiting their growth.

3. A composite criterion of investment and turnover shall apply for classification of an enterprise as micro, small or medium. All units with Goods and Services Tax Identification Number (GSTIN) listed against the same Permanent Account Number (PAN) shall be collectively treated as one enterprise and the turnover and investment figures for all of such entities shall be seen together for deciding the category as micro, small or medium enterprise. Earlier to this notification each location was treated a separate entity under MSME definition and an investment in that location was considered for the purpose of MSME status. There was no clubbing of the investments of different location and an enterprise was having many MSME units at different locations. This has been withdrawn with the above notification and thus preventing the large corporates to enter into MSME sector.
4. The purchase (invoice) value of a plant and machinery or equipment, whether purchased first hand or second hand, shall be taken into account excluding Goods and Services Tax, on self-disclosure basis. However the cost of certain items specified in the Explanation I to sub-section (1) of section 7 of the Act shall be excluded from the calculation of the amount of investment in plant and machinery like cost of R&D equipment, cost of pollution control equipment, cost of electric installation, transformers,

transportation and foundation expenses etc. are excluded from the cost. However, the on line Udyam Form mentions about cost of R&D equipment and cost of pollution control equipment for exclusion. This needs to be clarified by the MSME department.

ATMANIRBHAR BHARAT (SELF RELIANT INDIA)

As mentioned earlier that MSME sector is growth engine of the Indian economy, any measure to strengthen it will directly benefit the country. Recently many more initiatives have been taken to boost the MSME by the Government of India through self reliant India movement (Atmanirbhar Bharat).

These measures are:

1. **Guaranteed Emergency Credit Line (GECL) :** Under the scheme, Rs. 3 lakhs crores is provided for collateral free automatic loan up to 20% of entire outstanding credit as on 29.2.2020 to individual MSME. This scheme is called Guaranteed Emergency Credit Line. MSME Borrowers with a loan (fund based) outstanding up to Rs. 25 Crores and turnover up to Rs. 100 Crores are eligible under the scheme. Both the conditions of outstanding and turnover are required to be satisfied. For example, if the outstanding loan is below Rs. 25 Crores, but turnover is exceeding Rs. 100 Crores or vice versa, such borrowers are not eligible. The loan shall be repayable in four years with a moratorium of twelve months on Principal repayment. The interest rate is also capped at 9.25% p.a. and there is no guarantee fee, no processing fee and no fresh collateral shall be required. The Scheme shall remain open till 31st October, 2020. Cooperative Banks are not eligible to extend the credit under GECL.
2. **Package for Distressed MSME:** Ministry of MSME, have launched a the Credit Guarantee Scheme for Sub-ordinate Debt called "Distressed Assets Fund–Sub-ordinate Debt for MSMEs". A provision of Rs. 20,000 Crores have been made to provide equity support to stressed MSME, which have become NPA as on 30th April, 2020. This equity support is limited to 15% of the promoters stake i.e equity plus debt or Rs. 75 lakhs whichever is lower and the same is required to be introduced as equity in the MSME. This will improve the debt equity norm and also the liquidity. The scheme provide a moratorium of 7 years on payment of principal whereas maximum will be 10 years. The eligible MSME will make an application to the scheduled commercial bank and Government shall provide guarantee cover up to 90% through the Credit Guarantee Fund Trust for MSEs.

In case of non corporate entity, calculation of equity needs clarification, as the loss incurred by the entity is adjusted in the capital. Further promoters should also be defined to know the debts from them.

3. **Equity infusion through MSME 'Fund of Funds':** A provision of Equity infusion of Rs 50,000 crores for MSMEs through 'Fund of Funds' is expected to help viable MSMEs with growth. This will further help in capacity augmentation and also provide an opportunity to them to get listed in stock exchanges.

4. **Global Tender only for Rs. 200 Crores and above:** Global Tender in Government procurement up to Rs. 200 Crores is prohibited. Only domestic players are allowed to participate in tenders below 200 Crores This will help MSME to increase their business and support "Make in India" movement.
5. **MSME overdues from Government and Central Public Sector Undertakings (PSU):** Government has prescribed that it will be ensured to release funds for the payment of receivables of MSME due from Government and Central PSU's within 45 days.

MEASURES BY RESERVE BANK OF INDIA

Due to COVID-19 crisis and lockdown, industries all over the world are badly suffering. It will take time to restore the situation. Many industries specially MSMEs are facing liquidity problems.

To further supplement the efforts of Government of India, Reserve Bank of India has also taken certain measures to improve the liquidity in the economy. These measures are:

- i. **Emergency COVID-19 fund:** Lending institutions have been permitted to provide additional credit facilities up to 10% of the existing fund based working capital limits on easy terms.
- ii. **Relaxing Working Capital Financing Norms:** Lending institutions are advised to recalculate the drawing power by reducing the margin and/or reassessing the working capital cycle.
- iii. **Slashing Repo Rate/ CRR/ Reverse Repo rate:** Repo rates are slashed by 75 bps to 4.4%, CRR by 100 bps to 3% and reverse repo by 1.15 bps to 3.75% thereby reducing the borrowing cost for industries and improving liquidity in the market.
- iv. **Granting of Moratorium period:** RBI has permitted to grant additional moratorium period of three months up to 31st May, 2020 for outstanding loan as on 1st March, 2020 without applying the regular 90 days NPA norms. This period has further been extended by another three months i.e. up to 31st August, 2020.

The measures announced by RBI is benefiting trade and industry and MSME sector will be immensely benefited by these measures.

CONCLUSION

MSMEs have been accepted as the engine of economic growth and for promoting equitable development. MSMEs play crucial role in providing large employment opportunities at comparatively lower capital cost than large enterprises and also help in industrialization of rural and backward areas, thereby, reducing regional imbalances, assuring more equitable distribution of national income and wealth. However, continuous facilitation and support from the Government is required to minimize the transaction costs of technology upgradation, market penetration, modernisation of infrastructure, and also for easy availability of finance, relaxation from the labour laws, and ease of doing business, for the sustained growth of MSMEs in India. 

SME Capital Market - Strengthening MSME Ecosystem and Funnelling Growth

MSMEs play a crucial role in the growth and transformation of India with their maximum contribution towards sustainable growth, employment, and social stability with their limited economic resources. Despite being strategically important for India's economic development, the MSME sector is experiencing multiple challenges, the most severe being lack of means of finance. The Government and regulators have time and again attempted to address concerns of MSMEs through various policy measures and capital market initiatives to help MSMEs grow. In this article, we discuss MSME growth opportunities and constraints, global trends, and contribution of the SME capital market towards strengthening the MSME ecosystem.



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MSMEs are silent drivers of India's GDP growth. The role of MSMEs in fostering inclusive growth is evident from its contribution towards employment generation, share in manufacturing output, value innovations, generating local demand, contributing to exports, and most importantly boosting entrepreneurial spirit. To achieve the aspirational goal of the Atmanirbhar Bharat, growth of MSMEs is essential.

*Former Council Member, The ICSI

Contribution of MSMEs	
No of units	63.4 Million
Contribution to GDP	37.54%
Share of manufacturing output	33.40%
Total employment	120 Million
Share of exports	45%

Source: CII & Ministry of MSME

To unlock the true potential of MSMEs and strengthening the MSME ecosystem, developing favourable access to finance is most essential. MSMEs are the engine of India's economic growth and liquidity is the fuel, for the engine to run with interruptions, we must supply constant fuel.

ROADBLOCKS FACED BY MSMEs

Despite being strategically important for India's economic development, the MSME sector is experiencing multiple challenges, the most severe being lack of means of finance. Apart from financial assistance, MSMEs require well-timed handholding and mentoring at crucial stages of the business life cycle. Widespread awareness programs, skill development, recognition, peer learning, and getting Indian MSMEs visible on the global map is required to be part of the MSME growth agenda adding up to formalisation and leading to inclusive growth of the Indian economy.

Limited Means of Finance	<ul style="list-style-type: none"> ● Non-availability of adequate timely credit and high cost of credit ● Alternate fund raising avenues ● Limited awareness of capital markets
Handholding	<ul style="list-style-type: none"> ● Strategic guidance ● Corporatisation ● Business consolidation & valuations
Lack of Exposure and Visibility	<ul style="list-style-type: none"> ● Global exposure ● Visibility ● Recognition / Benchmarking
Lack of Growth / Knowledge Platform	<ul style="list-style-type: none"> ● Discussion forum ● Skill development Workshop ● Awareness of Govt policies / incentives

Several key issues remain to be addressed properly and measures yet to be taken in the interest of sustainable industrial development.

These include,

- Equity as a source of financing is underutilized and the prevalence of investment by venture capital and angel investors is low;
- MSMEs face the problem of delayed payments from their buyers which adversely impacts their working capital as well as their next cycle of production;
- MSMEs lack adequate information about various schemes and benefits available by the Government;
- Financial institutions/banks face challenges in credit risk assessment of MSMEs;
- The utilization of the available credit guarantee and insurance schemes by banks has been low;

Common Roadblocks

- Expansion, Product Diversification, Marketing & Branding, Manpower Strengthening, etc.
- Personal resources already deployed
- Bank loans at high recurring interest
- Collateral constraints
- Private capital/equity demands high returns with various controls

FINANCE HURDLE FOR MSMEs

MSMEs are deeply constrained by their issue of finance. A thorough analysis of the ‘vicious circle of finance’ encountered by the MSMEs and the financial ecosystem of the MSMEs is briefed hereinbelow.

The ‘vicious circle of finance’- Why is it such a big problem?



Financial constraints possess difficulties for MSMEs as conventional sources like bank finance have limitations. Private capital like funding through the sale of assets, ancestral capital, personal savings, loans from relatives, loans from an unregulated market is also inadequate.

Most of the bank finance or private capital is utilised for the working capital requirement. Fixed interest-free equity funding is required for MSMEs to grow their business to the next level that enables them to execute on business plans; for example, to increase sales, expand the range of products or services, move into new premises, hire more staff, or expand internationally, etc.

¹According to a study by International Financial Corporation overall addressable credit gap in the Indian MSME sector is estimated to be ₹ 25.8 trillion (\$ 397.5 billion). The total addressable demand for external credit is estimated to be ₹ 36.7 trillion (\$ 565 billion), while the overall supply of finance from formal sources is estimated to be ₹ 10.9 trillion (\$ 167.8 billion). It further states that, on account of inadequate equity base, MSMEs often take loans from multiple lenders overextending themselves financially and making them vulnerable to defaulting.

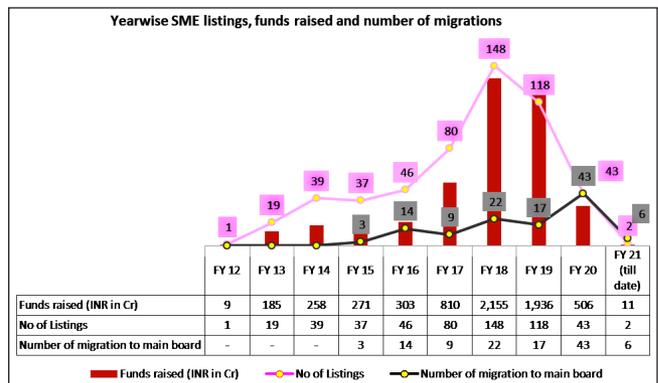
Although the demand for funds by MSMEs is high, it remains rather un-satisfied as structural and institutional impediments prevail over bank lending decisions i.e. the willingness to lend is low.

Equity as a source of financing is underutilized and the prevalence of investment by institutions, mutual fund, venture capital, and angel investors is low.

Most of the bank finance or private capital is utilised for the working capital requirement. Fixed interest-free equity funding is required for MSMEs to grow their business to the next level that enables them to execute on business plans; for example, to increase sales, expand the range of products or services, move into new premises, hire more staff, or expand internationally, etc.

INDIAN SME CAPITAL MARKET

To address finance constraints and bring avenues for fundraising for SMEs, Prime Minister’s Task Force (2010) recommended setting up dedicated exchanges for SMEs. Following the recommendation of the Prime Minister’s Task Force, to provide a platform for raising growth capital, SME Exchange platforms were launched by BSE (BSE SME) and NSE (NSE Emerge) in 2012. Indian SME Capital Market has since come a long way, by providing a platform for SMEs to grow from strength to strength with the help of interest-free growth capital and lend confidence to entrepreneurs. A total of 533 companies have been listed within about 8 years raising a cumulative growth capital of over ₹ 6500 Crores.



Compiled by the authors

¹ Financing India’s MSMEs - Estimation of Debt Requirement of MSMEs in India, November 2018 published by International Financial Corporation.

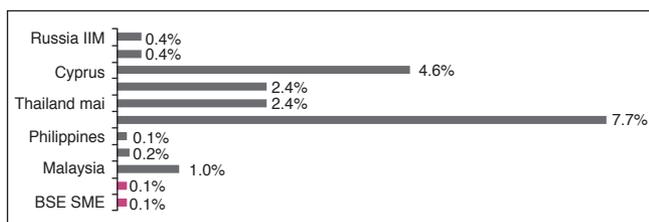
SME CAPITAL MARKET ON GLOBAL ARENA

Almost all major capital markets have a separate exchange for the SME segment, for that matter, more than 30 countries have implemented separate SME bourses. The global trend in recent times is towards the creation of new forms of capital markets specifically designed to meet the funding needs of SMEs. These markets have tried to create an SME-friendly capital market ecosystem with adequate demand and supply-side balance. This model of separate SME exchange prevalent across the globe has been successful since its inception.

SME exchanges or trading platforms are prevalent globally albeit known by different names, such as 'Alternate Investment Markets' or 'growth enterprises market', 'SME Board' etc. Some of the prominent SME exchanges include KOSDAQ from The Republic of Korea, ACE (Access, Certainty, Efficiency) Market in Malaysia, Catalist in Singapore, Chinext in China, Growth Enterprise Market (GEM) in Hong Kong, AIM (Alternative Investment Market) as part of London Stock Exchange.

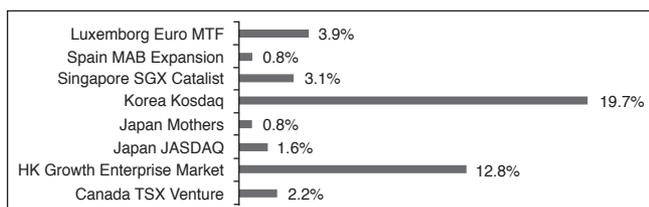
Below mentioned are some of the global SME exchanges and their Market cap to GDP comparison.

SME Market Cap / GDP (Emerging markets)



Compiled by the authors

SME Market Cap / GDP (Developed markets)



Compiled by the authors

India's SME Capital Market has huge potential and value unlocking capabilities that are still to be explored. This is evident from low SME Market Cap / GDP ratio than other global SME Markets.

GROWTH TRAJECTORY ON LISTING

Alternate Capital Market helps nation-building by shifting informal enterprises to formalisation. Most of MSME businesses are closely held family-run outfits characterised by challenges like scattered operations, multiple entities involving cost inefficiencies, leakages, tax avoidance, etc. These businesses form part of the "unorganised" economy and are located through industrial clusters across small towns and villages. Post public offerings, public accountability makes it imperative for these unorganised businesses to inculcate high governance standards.

- **Robust performance:** Post listing, SMEs get significant visibility and improved brand positioning. Enhanced governance standards, increased accountability and higher trust factor helps listed SMEs overcome hurdles as lessor efforts are required for acquiring business tenders and contracts. This is evident from the post listing financial performance of listed SMEs between FY 2017 and FY 2019. On analysis of 180 listed SME, it has been observed that during this period their revenue has increased by ₹ 16495 Crore and profits by ₹ 639 Crore. SMEs have contributed significantly to tax revenues, an increase of ₹ 246 Crore between FY 2017 and FY 2019.

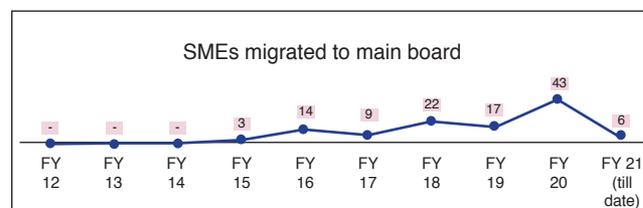
Comparative analysis of the increase in Revenue, PAT and Tax between 2017 & 2019

No of SMEs analysed (sample size)	180		
(₹ in Crore)			
Financial Year	Revenue	PAT	Tax
2017	14,101	362	151
2019	30,596	1,001	397
Increase	16495	639	246
% Increase	117%	177%	163%

Compiled by the authors

Alternate Capital Market helps nation-building by shifting informal enterprises to formalisation. Most of MSME businesses are closely held family-run outfits characterised by challenges like scattered operations, multiple entities involving cost inefficiencies, leakages, tax avoidance, etc. These businesses form part of the "unorganised" economy and are located through industrial clusters across small towns and villages. Post public offerings, public accountability makes it imperative for these unorganised businesses to inculcate high governance standards.

- **Migration to the mainboard:** BSE SME and NSE EmERGE provide an option to SMEs companies to migrate to the main board of the stock exchange on meeting the exchange criteria. Year on year we witness mature companies opting to migrate to the mainboard.



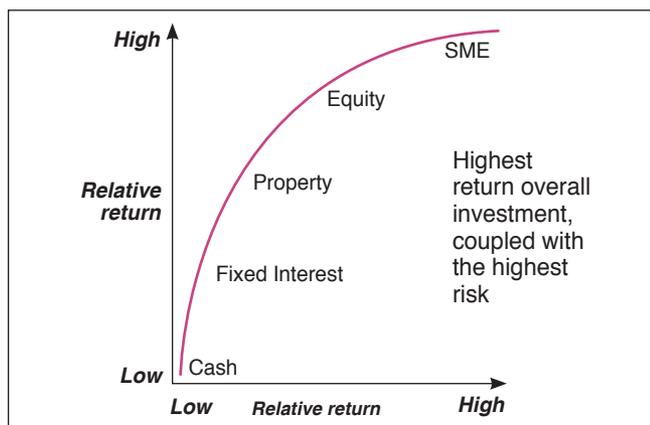
Compiled by the authors

On migration, a retail investor with a limited capital base can also invest in SMEs as there is no lot size restriction, even a single share can be traded.

- **Handholding by the regulator:** Regulators have been rational with SMEs in terms of compliance. Considering the early stage of the business life cycle, eligibility criteria for SME IPOs have been kept adequate to commensurate with the size and scale of businesses. Stock Exchanges have been playing the role of true enablers for handholding business during listing as also post listing. Post listing compliances involving costs and administration have been thoughtfully relaxed by the market regulator, SEBI.

SME INVESTING OPPORTUNITY

The very basic factor which attracts investors in an SME IPO, the uniqueness in business, niche presence, and popularity of the company in local markets. Non-traditional businesses like bio-fuel, agri resources, engineering & technology, integrated food distribution platform, supply chain logistics, waste management, construction materials, nutraceutical, robotics, and like are mobilising public funding through SME Capital Market. SME investing opportunity is particularly endorsed by the following factors.



- **Portfolio Diversification Tool:** SME investing appears to be a significant wealth creation opportunity. Regardless of their size, they have the potential to outperform their larger listed counterparts.

It's important to consider risk alongside returns. Sometime it could be perceived that SME investing is risky but if we dissect it with a granular approach, the outcome is indeed different. Considering the risk-return profile. SMEs generally offer attractive valuation multiples compared to mainframe companies.

However, to understand, SME would require in-depth research and a detailed on-ground study with a lot of reference checks with customers/suppliers/competitors and other stakeholders along with quantitative parameters. Needless to mention to analyse an SME, it is very important to study & understand qualitative insights into the promoters - family, personal financial discipline, and organization health check.

“Know what you own, and know why you own it” - Peter Lynch

Positive post-IPO price performance and attractive valuation for keeping investors engaged SME investing

are difficult and there could be more landmines than goldmines. But to say that these issues are specific only to SMEs and not to companies on other platforms would be unfair. Given market volatilities and corporate governance irregularities, investors have become more selective. To balance the risk and return matrix, portfolio allocation to SMEs is the best way to maximise returns.

- **Liquidity:** Liquidity level in an SME scrip should be looked at considering the small size of IPO and the number of investors involved. Even if a few trades take place in a week, the percentage trades may still be higher compared to a Main Board scrip having large market capitalisation and investor base. Further, the mandatory market-making acts as a cushion for investors to get in and out of SME scrip regardless of the low liquidity level.

However, it would be worthwhile for the regulator to review the norms and make it more investor-friendly to provide a fillip to the liquidity levels. There is a dire need to relax lot size guidelines for the SME segment which will attract retail participation as well as improve liquidity and will go a long way in the growth of the SME market.

- **Under researched:** Mutual fund houses, ultra HNIs and QIBs invest in SMEs, both pre & post listing. However that covers just 1% of the total SME universe, hence a large portion of the market is still untapped. Very few research reports are available in the public domain and those available are just for handpicked stocks. Hence a lot of investment opportunities remain un-researched and untouched. This impacts tracking and liquidity significantly.

In past, SME IPOs have witnessed up to 100x subscriptions and shares being traded daily in volumes. For a year there is subdued interest particularly in small-cap segments and its corresponding effect is seen in SMEs.

	Large Universe
	Fast-growing Emerging Sectors
	Low base with right Economies In favour
	Attractive Valuation
	Room for Diversification
	Under Researched/ Under Owned/ Under-Serviced Segments
	Low Base of Untapped Opportunity



Very few research reports are available in the public domain and those available are just for select stocks. Hence a lot of investment opportunities remain under researched.

ROLE OF GOVERNMENT

Growing SME platforms provide a growth platform for emerging SMEs which in turn contributes to developments of State economies. Various State Governments are taking several initiatives to support fast flourishing SME platforms.

While Gujarat and Rajasthan State Governments provide subsidy towards IPO expenses, Maharashtra and West Bengal have set up dedicated funds to invest in MSMEs.

If we look at the statistics, the highest number of SMEs listings and funds raised are from Maharashtra and Gujarat, compared to other states. Other State Governments should also unleash encouraging initiatives to support their SMEs for raising growth capital on SME bourses. With such growth funding becoming easy, SMEs are expected to progress in their businesses faster and in turn, contribute to State economies.

COVID-19 - AATMANIRBHAR BHARAT SCHEME – AATMANIRBHAR MSMEs

MSMEs have been hit by COVID-19 and are currently resolving small hiccups to restart the business. Honourable Finance

Minister recently announced measures to boost liquidity in MSMEs, help them take benefit of the Government schemes, and strengthen their competencies. The following are recent relief for Aatmanirbhar MSMEs.

- **Collateral-free loans of ₹ 3 Lakh Crore to MSMEs:** Banks and NBFCs will offer up to 20 per cent of entire outstanding credit as on February 29, 2020, to MSMEs. Units with up to ₹ 25 Crores outstanding credit and ₹ 100 Crores turnover are eligible for taking these loans that will have four-year tenor with a moratorium of 12 months on principal payment. The scheme can be availed till October 31, 2020. The Government will provide a complete credit guarantee cover to lenders on the principal and interest amount.
- **Provision of ₹ 20,000 Crore of Subordinate Debt:** The Government will facilitate the provision of ₹ 20,000 Crore as subordinate debt for providing equity support to those MSMEs which are declared NPAs or stressed. The Government will also provide ₹ 4,000 Crore to Credit Guarantee Fund Trust for Micro and Small Enterprises (CGTMSE) that will offer partial credit guarantee support to banks for lending to MSMEs. This would benefit around two lakh such businesses.
- **Fund of Funds to be created - ₹ 50,000 Crore Equity infusion:** The Government will create Fund of Funds to infuse ₹ 50,000 Crore equity in MSMEs. The fund shall encourage MSMEs to list on stock exchanges.

- **MSME definition revised; benefitting several units:** Honourable Finance Minister revised the definition of MSMEs to include more units under it and make them eligible for MSME benefits. Under the new definition, manufacturing and service MSMEs will be defined under a common metric that will be a mix of investment in plants and machinery or equipment and turnover.

Manufacturing enterprises investing less than ₹ 25 Lakhs, less than ₹ 5 Crores, and less than ₹ 10 Crores in plant and machinery or equipment were till now defined as micro, small and medium enterprises respectively. For services businesses, the investment threshold limit stood at less than ₹ 10 Lakhs, less than ₹ 2 Crores, and less than ₹ 5 Crores were defined as micro, small and medium enterprises respectively. Now, with the revised definition, combining manufacturing and service MSMEs to enjoy same benefits, investment less than ₹ 1 Crores and turnover under ₹ 5 Crores will be defined as micro-units while small businesses will be categorized based on investment less than ₹ 10 Crores and turnover under ₹ 50 Crores. Medium enterprises will be defined based on investment under ₹ 20 Crores and turnover less than ₹ 100 Crores.

Existing & Revised definition of MSMEs			
Existing MSME Classification			
Criteria: Investment in Plant & Machinery or Equipment			
Classification	Micro	Small	Medium
Manufacturing enterprises	Investment < ₹ 25 Lakhs	Investment < ₹ 5 Crores	Investment < ₹ 10 Crores
Services Enterprises	Investment < ₹ 10 Lakhs	Investment < ₹ 2 Crores	Investment < ₹ 5 Crores

Revised MSME Classification			
Composite Criteria: Investment and Annual Turnover			
Classification	Micro	Small	Medium
Manufacturing & enterprises	Investment < ₹ 1 Crores and Turnover < ₹ 5 Crores	Investment < ₹ 10 Crores and Turnover < ₹ 50 Crores	Investment < ₹ 20 Crores and Turnover < ₹ 100 Crores

Source: Aatmanirbhar Bharat Part-1: Businesses including MSMEs

- **Global tenders will be disallowed in the interest of MSMEs:** Addressing MSMEs' issue of unfair competition from foreign companies in Government procurement tenders due to the size and strength differ, the Government has proposed to disallow global tenders in schemes up to ₹ 200 Crores. Honourable Finance Minister has confirmed that global tenders will be banned for Government procurement up to ₹ 200 Crores so that MSMEs can compete and supply in Government tenders. Necessary



amendments of General Financial Rules will be effected accordingly.

- **MSME Dues will be cleared within 45 days:** Honourable Finance Minister has assured that the Government and central public sector enterprises will release all pending MSME payments in 45 days. The fintech enterprises will be used to boost transaction-based lending using the data by the e-marketplace. This e-market for developing linkages for MSMEs will be promoted to replace trade fairs and exhibitions.

CONCLUSION

Irrespective of listing status, COVID-19 has hit SMEs. However, it a matter of pride for all of us that India's SME sector has emerged out stronger from this pandemic. They have not just survived but also thrived through the hard times and turned all tailwinds into a lifetime opportunity. Many of the listed SMEs have come out with anti-COVID products/businesses like first of the kind of machines to produce PPE kits, masks, sanitizers, various immunity booster neutral products, etc., to cite a few examples.

The process of value unlocking is very important. Progressive businesses, who appreciate wealth creation and business valuation, have been able to raise funding at desired valuations.

Governance structures, improved credit rating, reduced finance cost, easy finances, and branding are key benefits for listing on the SME platform. Besides, valuation has helped listed SMEs to achieve speedy growth systematically at an early stage of their respective business life cycle. Greater awareness needs to be created and a larger number of industries should be made aware so that the benefits of fundraising through capital markets can be enjoyed by maximum industries. 

MSMEs - Substantial Change in Criteria and the need to address certain issues

There is no doubt about the great contribution made by the MSMEs to the growth of the Indian economy. The recent decision by the Government to substantially enhance the threshold levels of turnover and investments in plant & machinery for determining whether the entity is Micro, Small or Medium is a welcome move. It is definitely expected to give fillip to the inclusive growth of the MSME sector. The article deals with the contribution made by the MSME sector to the Indian economy, the recent changes to the definition and concepts of MSME and also what needs to be done to address the problems faced by the sector.



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BACKGROUND

M SME sector has emerged as a highly vibrant and dynamic sector of the Indian economy over the last five decades by fostering entrepreneurship and generating largest employment opportunities at comparatively lower capital cost, next only to agriculture. MSMEs are complementary to large industries as ancillary units and this sector contributes significantly to the

inclusive industrial development of the country, expansion of employment generation and boosting exports.

As per the Annual Report 2018-19 of the MSME Ministry, from the data collected by the Central Statistics Office (CSO), Ministry of Statistics & Programme Implementation, the contribution of MSME Sector to the country's Gross Value Added (GVA) for the year 2016-17 was 31.08% and to Gross Domestic Product (GDP) was 28.9%. According to National Statistical Office, the share of MSME sector in the country's total GDP during 2018-19 has been 30.3%. According to Directorate General of Commercial Intelligence and Statistics (DGCIS), the share of MSME related products in total exports during 2018-19 has reached 48%. These numbers bear ample testimony to the assertion that the MSMEs make a significant contribution to the economy of the country.

The quarterly report prepared on the basis of information available on the Udyog Aadhaar portal provides information on registration of MSMEs on various parameters such as gender, social category, major activity, investment and employment generated. This quarterly publication covers the registration data for the period from October 2015 to December 2019. Out of total registration of 83,70,447 MSMEs, 74,17,612 are registered under Micro Enterprises (88.62%), 9,17,096 under Small Enterprises (10.96%) and 35,739 (0.43%) under Medium Enterprises.

The registration of enterprises under different activities *i.e.* Manufacturing and Services were 34,49,604 (41.21%) and 49,20,843 (58.8%) respectively. The total investment made by Enterprises during the period was Rs. 1162307.56 crores. Out of the total investment made by MSMEs, the maximum investment was made by Small Enterprises (Rs 6,07,565.86 crores) followed by Micro Enterprises (Rs 3,27,409.57 crores) and Medium Enterprises (Rs. 2,27,332.13 crores). Total number of registered MSMEs is 83,70,447 and during October 2015 to December 2019 has employed 4,66,61,862 persons. Out of this, 2,86,82,655 (61.46%) persons are employed in Micro enterprises, 1,50,28,301 (32.20%) persons in Small enterprises and 8,73,241 (6.32%) persons in Medium enterprises.

MSMED ACT, 2006

Vide Notification No.SO No.1154(E) dated 18th July 2006, the MSMED Act, 2006 was brought into force with effect from the 02nd October 2006.

NEW CRITERIA FOR CLASSIFICATION FOR MSMEs

The MSME Ministry of the Central Government has, *vide* Notification SO No.1702(E) dated 01st June 2020 announced new criteria for classification of Micro, Small and Medium Enterprises, namely:

Enterprise category	Investment threshold in Plant and Machinery and Equipment	Turnover Threshold
Micro Enterprises	Does not exceed Rs.1 crore	Does not exceed Rs.5 crores.
Small Enterprises	Does not exceed Rs.10 crores.	Does not exceed Rs.50 crores
Medium Enterprises	Does not exceed Rs.50 crores.	Does not exceed Rs.250 crores

The above notification has come into force from 01st July 2020

NEW REQUIREMENTS THAT MSMEs HAVE TO TAKE CARE

Vide notification SO No.2119 dated 26th June 2020, the MSME Ministry has announced the methodology for computing the value of investment in plant and machinery or equipment. Firstly, the above notification makes it clear that the expression “plant and machinery” or “equipment” shall have the same meaning as assigned to the plant and machinery in the Income Tax Rules, 1962 framed under the Income Tax Act, 1961 and shall include all tangible assets (other than land and building, furniture and fittings). As such, it could be seen that the calculation of investment in plant and machinery or equipment is linked to the Income Tax Return (ITR) of the previous years filed under the Income Tax Act, 1961. The Notification says that the purchase (invoice) value of a plant and machinery or equipment, whether purchased first hand or second hand, shall be taken into account excluding Goods and Services Tax (GST), on self-disclosure basis, if the enterprise is a new one without any ITR. There may be new enterprises established and such entities may not have income tax returns at all. In such cases, self-declaration will do. The above notification states that the self-declaration is valid only until the 31st March of the financial year in which, it files its first ITR.

The cost of certain items specified in the Explanation I to sub-section (1) of section 7 of the Act shall be excluded from the calculation of the amount of investment in plant and machinery. The Explanation 1 under Section 7 of MSME Act clarifies that in calculating the investment in plant and machinery, the cost of pollution control, research and development, industrial safety devices and such other items as may be specified, by notification, shall be excluded. In this regard, it will be useful to refer to Notification SO No.1722 (E) dated 05th October 2006 to get a full list of items that is not included in reckoning the value of investment in plant and machinery. For instance, value of investment in power generating sets and additional transformers are not counted.

If an enterprise crosses the ceiling limits specified for its present category in either of the two criteria of investment or turnover, it will cease to exist in that category and be placed in the next

higher category but no enterprise shall be placed in the lower category unless it goes below the ceiling limits specified for its present category in both the criteria of investment as well as turnover. All units with Goods and Services Tax Identification Number (GSTIN) listed against the same Permanent Account Number (PAN) shall be collectively treated as one enterprise and the turnover and investment figures for all of such entities shall be seen together and only the aggregate values will be considered for deciding the category as micro, small or medium enterprise.

Another important requirement under the above Notification is for the existing enterprises registered under Entrepreneurs Memorandum (EM) – Part-II or Udyog Aadhar Memorandum (UAM) (Revised UAM notified *vide* SO No.85(E) dated 10th January 2017). These existing enterprises have to register again on the Udyam Registration portal (newly established by the MSME Ministry) on or after the 1st day of July, 2020. Further the Notification makes it clear that the existing enterprises registered prior to 30th June, 2020, shall continue to be valid only for a period up to the 31st day of March, 2021. Considering the number of MSME units, Government could have thought about seamless data transfer going away with the need for fresh registration at least for those enterprises having Udyog Aadhar Number.



Exports of goods or services or both, shall be excluded while calculating the turnover of any enterprise whether micro, small or medium, for the purposes of classification. Information as regards turnover and exports turnover for an enterprise shall be linked to the Income Tax Act or the Central Goods and Services Act (CGST Act) and the GSTIN. The turnover related figures of such enterprise which do not have PAN will be considered on self-declaration basis for a period up to 31st March, 2021 and thereafter, PAN and GSTIN shall be mandatory. For instance, if the investment in plant and machinery does not exceed Rs.50 crores and the turnover exceeds Rs.250 crores due to export turnover, the enterprise will be a medium enterprise since export turnover is not to be reckoned for determining the turnover threshold.

There may be cases wherein the thresholds, the value of investment in plant and machinery or equipment or as the case may be, the turnover at the end of year, might change, as a result of which it moves from one level to another, upward or downward. The above Notification takes care all these situations. Where there is an upward change in terms of investment in plant and machinery or equipment or turnover

or both, and consequent re-classification, an enterprise will maintain its prevailing status till expiry of one year from the close of the year of registration. However, in case of reverse-graduation of an enterprise, whether as a result of re-classification or due to actual changes in investment in plant and machinery or equipment or turnover or both, the enterprise will continue to remain in its present category till the closure of the financial year and it will be given the benefit of the changed status only with effect from 1st April of the financial year, following the year in which such change took place. This declaration regarding status of an enterprise during a financial year in which the change occurs adds clarity. No law could come in the way of expansions based on business needs or the decision to demerge or hive off or stop doing any particular business activity which are commercial decisions that businesses take from time to time.

PRINTING THE EM NUMBER

As per office memorandum dated 26th August 2008, it was made mandatory that the MSMEs must print their EM Acknowledgement Number on their letter heads, supply order sheets, invoices, bills, and other relevant documents. This procedure will continue for registrations under the Udyam Registration Portal as well, although nothing has been stated about the same in this Notification dated 26th June 2020.

CLUBBING PROVISIONS

It may be useful to note that *vide* Circular dated 03rd March 2016, the MSME Ministry made an important announcement regarding clubbing provisions. In order to remove the tendency of owners of enterprises to set up a number of entities in different forms so as to retain status as an enterprise falling under MSMED Act, on the basis of ownership and control, clubbing provisions were introduced. *Vide* a Circular dated 29th September 2015 issued by the MSME Ministry, the matter regarding clubbing of investments in plant and machinery of units located in different districts or different States was examined and it was stated that investments in plant and machinery “of all enterprises under the same ownership” should be clubbed together for assessing status of MSMEs under the MSMED Act. The Circular dated 03rd March 2016 had withdrawn the circular dated 29th September 2015. As a result, clubbing provisions would not apply. In fact, MSMED Act does not provide for clubbing of investments even if the same person is the promoter or owner of entities, say, two or more companies and hence each one would qualify to be registered and regarded as MSME. In fact, during the regime before the advent of the MSMED Act, 2006, there was a notification with regard to clubbing for entities to be considered as Small-Scale Industrial Units. *vide* Notification No. S.O. 563 (E) dated February 27, 2009, (see office memorandum No.5(10)2007 MSME/POL dated April 15, 2009), it was notified that the stipulation regarding clubbing of investments (of two or more entities under the same ownership) notified *vide* Notification No. S.O.2 (E) dated 1 January 1993 read with Notification No. S.O.857 (E) dated December 10, 1997), has been rescinded.

SPECIAL PROVISIONS FOR RECOVERY OF DUES UNDER MSMED ACT

Sections 15, 16, 17 and 18 of the MSMED Act can be invoked when an MSME Enterprise, being a supplier of any goods or services, finds it difficult to recover any amount due for goods

or services supplied to any buyer. A proviso under Section 15 states that in no case shall the period agreed upon between the supplier and the buyer in writing, exceed forty-five days from the day of acceptance or the day of deemed acceptance. This proviso makes it clear that the maximum credit period shall not exceed 45 days. Section 16 operates notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force. Section 16 says that the buyer who is in default in paying any amount due to a supplier is liable to pay compound interest with monthly rests to the supplier on that amount from the due date and the rate of interest will be three times of the bank rate notified by the Reserve Bank. Currently, the Bank Rate as notified by Reserve Bank of India is 4.25% (as on 26th Jun 2020). Section 17 states that the buyer is liable to pay the interest as stated in Section 16.

MICRO AND SMALL FACILITATION COUNCIL

Section 18 of the MSMED Act declares that any party to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprises Facilitation Council. Whenever a supplier raises a dispute to this council, after perusal of relevant documents and after hearing both sides, the Council issues an order quantifying the amount payable, which is enforceable as a decree. Section 18 further says that notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India and that the reference if any made to the Council must be decided within a period of 90 days from the date of reference.

“ As per office memorandum dated 26th August 2008, it was made mandatory that the MSMEs must print their EM Acknowledgement Number on their letter heads, supply order sheets, invoices, bills, and other relevant documents. This procedure will continue for registrations under the Udyam Registration Portal as well, although nothing has been stated about the same in this Notification dated 26th June 2020.

Thus, the MSMED Act contains extra-ordinary provisions to come to the rescue of suppliers who are MSMEs. The term “supplier” is a defined to mean a micro or small enterprise, which has filed a memorandum with the authority referred to in sub-section (1) of section 8. At the same time, the buyer could also be an MSME Enterprise.

Section 22 of the MSMED Act states that if any buyer is required to get his annual accounts audited under any law for the time being in force, such buyer shall furnish the following additional information in his annual statement of accounts, namely:

- i. the principal amount and the interest due thereon (to be shown separately) remaining unpaid to any supplier as at the end of each accounting year;
- ii. the amount of interest paid by the buyer in terms of section 16, along with the amounts of the payment made to the supplier beyond the appointed day during each accounting year;
- iii. the amount of interest due and payable for the period of delay in making payment (which have been paid but beyond the appointed day during the year) but without adding the interest specified under this Act;
- iv. the amount of interest accrued and remaining unpaid at the end of each accounting year; and
- v. the amount of further interest remaining due and payable even in the succeeding years, until such date when the interest dues as above are actually paid to the small enterprise, for the purpose of disallowance as a deductible expenditure under section 23.

FILING OF RETURN IN FORM MSME-1

In fact, the Ministry of Corporate Affairs (MCA) issued an Order *vide* SO 368(E) dated 22nd January 2019 whereby MCA mandated the filing of a return in Form MSME -1 as a half-yearly return by 31st October for the period from April to September and by 30th April for the period from October to March showing all outstanding dues to Micro or small enterprises suppliers.

Section 23 of the MSMED Act operates notwithstanding anything contained in the Income-tax Act, 1961, and it states that the amount of interest payable or paid by any buyer, under or in accordance with the provisions of MSMED Act, is not, for the purposes of computation of income under the Income-tax Act, 1961, to be allowed as deduction.

Section 24 of the MSMED Act declares that the provisions of sections 15 to 23 shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

The Central Board of Direct taxes had issued Instruction No.12/2006 dated 14th December 2006 on the need to disclose principal and interest amount paid to MSME Suppliers since deduction is not allowed for the interest on delayed payments to MSME Suppliers.

SPECIAL PROVISIONS FOR MSMEs UNDER THE IBC

One of the most innovative and disruptive provisions of Insolvency and Bankruptcy Code, 2016 (IBC) is Section 29A. Section 29A of IBC prohibited certain persons from bidding for acquiring insolvent enterprises as resolution applicants. Promoters who have been called upon to pay the amount due when the corporate debtor's account with a bank is marked as a non performing asset or when a promoter is a wilful defaulter such a person is disqualified from submitting bids as a resolution applicant. However, with effect from 06th June 2018, Section 240A of IBC was introduced which states that nothing contained in clauses (c) and (h) shall apply to MSMEs. Clause (c) of section 29A pertains to the case of a corporate debtor which has been marked as a non performing asset and clause

(h) pertains to a person who stood as a guarantor in favour of a creditor of the corporate debtor in relation to which the corporate insolvency resolution process has been commenced and the said guarantee has been invoked. Further sub-section (2) of Section 29A of IBC empowers Central Government to notify that certain provisions of IBC will not apply altogether or will apply subject to modifications.

“ In fact, the Ministry of Corporate Affairs (MCA) issued an Order *vide* SO 368(E) dated 22nd January 2019 whereby MCA mandated the filing of a return in Form MSME -1 as a half-yearly return by 31st October for the period from April to September and by 30th April for the period from October to March showing all outstanding dues to Micro or small enterprises suppliers.

UNIDO SURVEY TO KNOW THE IMPACT OF MSMEs

To gauge the impact of MSMEs, the United Nations Industrial Development Organization (UNIDO) contacted 85 enterprises and asked about the challenges they are facing and their expectations and plans for the revival of their businesses once the lockdown is lifted. The survey was conducted through telephone during the period 9-13 April and included enterprises engaged in the automotive components, bicycle, paper, textile, ceramic, foundry, tea and rice milling sectors in clusters across India (Berkel, 2020).

Some of the key findings of the UNIDO survey 2020 include:

- a) MSMEs were already experiencing a pre-lockdown decline in business, due to the disruption of international supply chains due to the lockdown in China.
- b) Migrant workers, particularly semi and unskilled workers have returned in large numbers to their hometowns.
- c) Some communications, sales, administrative and other support activities are being undertaken from home but on a rather limited scale and some manufacturers tried to innovate based on the new demand created by COVID-19.
- d) Manufacturing MSMEs stopped operating, resulting in reduced demand and cancellations of orders across the board, with the exception of essential industries.
- e) For essential industries, necessary inputs from non-essential industries cannot be met. For example, the paper industry cannot meet current demands for high-quality paper for pharmacy, food and hygienic applications.

Ills, Issues and Remedial Measures for MSMEs –ABC Planning to tackle situation brought about by COVID-19

Generally, MSMEs suffer from the following ill and issues:

- a) Financial crunch makes it difficult for them to hire best of the talents.

- b) Owners / promoters / directors tend to divert working capital funds for other purposes as a result of which the units suffer from misapplication or misutilisation of funds.
- c) Creditors are stretched to maximum extent due to lack of prudence in financial management.
- d) Skilled workers always move out in search of greener pastures as remuneration levels, perquisites and working conditions are not always attractive enough to retain talents.
- e) Enterprises do not offer sufficient incentives or stock options to retain talents and create in their employees proprietary interests.
- f) Favouritism, nepotism and multiple related party controls and commands create a confused organization structure.
- g) In spite of special provisions for recovery of dues and statutes like the IBC, due to their dependence on large enterprises for orders, MSME units are not in a position to fight with their customers.
- g) Dues from Government side, whether State or Central, must be promptly paid as a matter of policy as MSME units have to literally beg before the concerned departments, before they get their cheques released.
- h) State Government must provide decent hostel facilities for men and women near all industrialised locations so that workers do not incur huge costs for their stay.
- i) There must be master circular that captures all the applicable provisions, rules, regulations, circulars, notifications, forms, concessions and incentives. This must be an initiative of the MSME Ministry.

The CFO of Economic Times on April 27, 2020 published an ABC framework, a recovery plan that needs to be developed by business leaders and ideally assisted by their finance and accounting teams or advisors which suggests that small businesses apply a three-step *Assess-Build-Communicate* (ABC) recovery planning framework. For individuals and institutions alike, COVID-19 created a situation that businesses and governments were completely ill-prepared to deal with, had never anticipated and are still grappling with the enormity of it all. Small businesses must apply a three-step Assess-Build-Communicate (ABC) recovery planning framework as given below:

The tri-mantra is the following

- *Assess the current situation, preferably with a team of experts;*
- *Build a plan by brainstorming with the team of experts and*
- *Communicate calmly, clearly, and continuously.*

Other crying needs

- a) Generally, cost of funds must be not more than 3% of the Bank Rate for MSMEs to become viable.
- b) Compliance costs must be reduced.
- c) Labour laws must be relaxed.
- d) Small company definition under the Companies Act, 2013 must be expanded to bring more companies under that classification.
- e) Skill development institutions must be set up across all the States, preferably in every district, so that there is no dearth for skilled man power.
- f) Rate of Income tax must be brought down to the level of 10% to 15% since GST takes care of everything, both on the purchases side and supply side. MSMEs should not be bothered with too many complicated income tax provisions that introduce too many 'ifs' and 'buts'.

FINANCIAL SUPPORT SPECIFIC TO MSMEs

Many public sector banks have introduced emergency credit lines whereby MSMEs borrowers can avail a maximum loan amount of up to INR 200 crores or 10 per cent of the existing fund-based working capital limits. Small Industries Development Bank of India (SIDBI) has announced a 5 per cent rate concession on all loans to MSMEs.

The Government of India announced collateral-free automatic loan worth Rs 3 lakh crores. Borrowers with up to Rs 25 crores outstanding and Rs 100 crores turnover are eligible for these loans that will have a 4-year tenure and moratorium for 4 months. There will be a 100% credit guarantee cover and to Banks and on principal and interest and the scheme can be availed till October 31, 2020. This is expected to benefit 45 lakhs units. From a report by Economic times dated 22nd June 2020, quoting the finance ministry it is said that banks have sanctioned over Rs 75,000 crores loans so far under the Rs 3-lakh crores Emergency Credit Line Guarantee Scheme (ECLGS) for the MSME sector reeling under stress due to the coronavirus-induced lockdown. However, loans worth Rs 32,894.86 crores are disbursed under the 100 per cent ECLGS for the micro, small and medium enterprises (MSMEs), starting June 1.

Apart from the above scheme, in order to provide stressed MSMEs with equity support, Government will also facilitate provision of Rs. 20,000 crores as subordinate debt. For the Subordinate debt for stressed MSMEs, promoters of the MSME will be given debt by banks, which will then be infused by promoter as equity in the Unit. Subordinated debt facility will aid 2 lakhs stressed MSMEs.

The Government of India made an announcement that TDS and TCS will be reduced by 25% and that all refunds to entities including Proprietorship, Partnership firms and LLP etc. would be issued immediately, which will also help the liquidity situation of MSMEs. 

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SME Exchange – The alternative fund-raising platform for the Small and Medium Enterprises

India is a land of entrepreneurs and the growth in Indian economy has opened windows of opportunities for a large number of SME companies across different sectors and geographical locations. However, lack of availability of capital for growth is one of the key challenges that prohibit the deserving SMEs to exploit opportunities and grow exponentially. This is where SME exchange emerges as a viable alternate fund-raising platform. NSE is continuously focussing on developing and enlarging the scope of the ecosystem for the financial markets where the Indian corporations can tap alternate funding mechanisms and chart their growth stories. NSE SME Platform EMERGE was launched in 2012 and since then it is facilitating towards providing a viable and sustainable option for the smaller companies to raise equity capital, provide an attractive alternate investment opportunity to the informed investor community. Post economic slowdown and COVID-19, the SME exchanges, specifically NSE would take significant steps for making the platform attractive to the SME.



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Small and Medium Enterprises (SME) sector is considered to be one of the most important pillars for the growth of the Indian economy. They are the largest employment provider and contribute significantly towards the industrial output and exports of our country. The sector provides flexibility to the Indian economy to sustain economic shocks and adversities. It has emerged as a highly vibrant and dynamic sector of the Indian economy over the several decades.

In spite of the crucial role played by them, they face numerous challenges; the biggest challenge being faced by these enterprises is access to capital.

Traditionally, SMEs are known to rely on bank financing. However, lack of finance because of the high cost of credit, collateral requirements, and non-availability of timely credit continues to be the biggest impediment in the growth of SMEs. With the Indian economy growing, the need for SMEs to raise capital is critical. Recognising the problems faced by SMEs, the Prime Minister's task force, in 2010, had recommended setting up SME Exchange/Platform. Securities Exchange

Board of India (SEBI) immediately started working on it and after deliberating with Exchanges and various stakeholders, framed the guidelines for SME Exchange/Platform.

The BSE and the NSE launched their platform for small and medium enterprises to raise funds and list on the SME Platform and later migrate to the main board of the BSE and NSE.

NSE SME platform EMERGE was launched in 2012 as a new source for SME public offerings and provide listing opportunities to the SMEs with easier eligibility norms of paid capital not more than 25 crores, track record of three years and profitability of two years, minimum compliances and cost compared to the main board. SME listing not only provides benefits to the companies but also benefits its investors, both existing and proposed, such as providing an exit route to private equity investors as well as liquidity to the ESOP holding employees. Listing pre-supposes good corporate governance, which results in sustainability and helps generate an independent valuation of the company.



*The views expressed are personal views of the author

Listing raises a company's public profile with customers, suppliers, investors, financial institutions and the media and provides continuous liquidity to the shareholders.

To build the credibility of the platform and instil investor confidence towards this platform, stringent entry process has been put in place with deeper scrutiny of the disclosures in the DRHP, track record of the promoters, litigations, compliances with respect to Companies Act, investor grievances, financial statements of the company etc.

CONDITIONS PRECEDENT TO LISTING

The Issuers on SME platform shall adhere to conditions precedent to listing as emerging, inter-alia, from

1. Securities Contracts (Regulations) Act 1956,
2. Companies Act 2013,
3. Securities and Exchange Board of India Act 1992,
4. Any rules and/or regulations framed under foregoing statutes, as also any circular, clarifications, guidelines issued by the appropriate authority under foregoing statutes.

The following criteria should be complied with as on the date of filing the Public Offer Document with NSE as well as when the same is filed with Registrar of Companies (ROC) and SEBI.

1. The Issuer should be a company incorporated under the Companies Act 1956 / 2013 in India.
2. The post issue paid up capital of the company (face value) shall not be more than Rs. 25 crore.
3. Track record of at least three years of either
 - i. the applicant seeking listing; or
 - ii. the promoters¹ / promoting company, incorporated in or outside India or
 - iii. Proprietary / Partnership firm and subsequently converted into a Company (not in existence as a Company for three years) and approaches the Exchange for listing.

“ To build the credibility of the platform and instil investor confidence towards this platform, stringent entry process has been put in place with deeper scrutiny of the disclosures in the DRHP, track record of the promoters, litigations, compliances with respect to Companies Act, investor grievances, financial statements of the company etc.

¹ Promoters mean one or more persons with minimum 3 years of experience in the same line of business and shall be holding at least 20% of the post issue equity share capital individually or severally.

4. The company/entity should have positive cash accruals (earnings before depreciation and tax) from operations for at least 2 financial years preceding the application and its net-worth should be positive.

There are several other parameters defined regarding the promoters, directors, their track records, company's solvency parameters etc.

The easier entry norms and the investor interest for the platform led to more than 200 SMEs listing on the platform and raising funds more than 3200 crores through initial public offerings. Funds raised were used for business expansion plans, working capital requirements and other general corporate purposes. Out of these companies listed on the SME platform, more than 30 companies have also migrated to the mainboard of NSE.

The companies have benefited immensely from listing on the SME platform.

The benefits that entail listing are as follows :-

Access to capital and future financing opportunities

- Capital for growth, innovation and acquisitions.
- Favourable terms of debt finance for listed companies.

Liquidity /exit for investors

- Unlocking of shareholder wealth. Exit and Liquidity for VC/ PE/ Risk Investors.

Facilitate Acquisitions

- Shares are more efficient & cost effective currency substitute to acquire target companies.
- Ability to complete M&A in a timely manner

Employee Stock Options

- ESOPs become powerful tool to attract & retain talent.
- Compensating employees without affecting cash flows.

Visibility/ Recognition

- Visibility on getting listed will improve customer client credibility.

Migration to main Board

- Allows companies to migrate to main board after a period of 2 years of listing on SME platform.

Going public is the ambition of many growing companies. It corroborates past achievements and propels future growth by access to a more widely distributed capital. However, going



public is a paradigm shift for a private company as it would be required to:

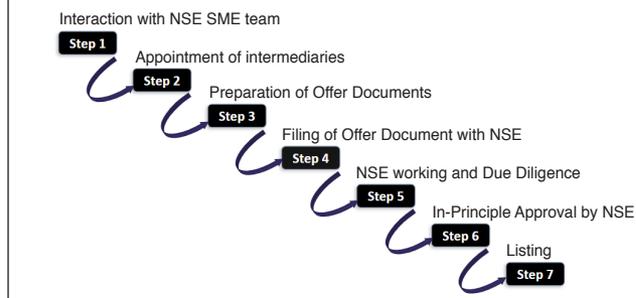
- Appreciate the need to meet initial and sustained expectations of external investors
- Appreciate the need to have a team, organization structure and internal processes which bring about investor credibility and capability to efficiently manage the capital market processes and increased level of scrutiny, reporting, compliances and regulatory obligations;

It is therefore critical that before considering a public listing, the entrepreneurs have or develop realistic awareness of their current level of preparedness and what needs to be done to become a successfully listed company.

Preparedness for listing

- Develop an understanding of the capital markets and the various processes involved in raising funds through an IPO.
- Weigh the IPO option vis-à-vis other options of raising funds
- Once it is chosen to opt for the IPO route, make a realistic assessment of readiness for listing.
- Start upgrading and strengthening the internal processes and systems to meet the requirements of a publicly listed company.
- Crystallise the project and capital raising plans
- Engage a merchant banker to assist in the IPO process

How can a Company List on NSE EMERGE?



In order to ensure that the SME entrepreneurs do not find the process difficult, cumbersome and time consuming, a simplified framework has been put in place for listing on SME Exchanges. Several relaxations have been provided to the issuers not only prior to listing but also post listing. The table below lists down the differences between listing on the main board and the SME Exchanges.

Parameters	Main Board	SME Exchange
Post – issue paid up capital (Face value)	Not less than INR 10 crore	Any amount less than INR 25 crores
Minimum number of allottees	1000	50
IPO Application Size	INR 10,000 - INR 15,000	Minimum of INR 1,00,000
Observation on DRHP	By SEBI	By Exchange
Market Making	Non Mandatory	Mandatory
Track record	Three years of track record of profitability	Relaxed norms for profitability
IPO Underwriting	Mandatory (however, not required where 50% of the issue offered for subscription to QIB's)	Mandatory (100% underwritten, out of which 15% compulsorily by Merchant Banker)
Time Frame for Listing	6-8 months	2-3 months
Reporting Requirements	Quarterly	Half Yearly

For the SMEs to raise funds from the public in the capital market, NSE is facilitating by creating an enabling environment for Entrepreneurs. A Series of seminars / workshops across all major SME clusters are conducted to dispel the myths that surround the Entrepreneurs and help them understand the benefits, obligations and process of going public.

NSE has been constantly engaging with the State and Central governments in order to have wider participation

from the entrepreneurs across the country. Several states like Maharashtra, Gujarat, Rajasthan, Punjab, Haryana etc have also taken the initiative of reimbursing a portion of the IPO expenses to the SME companies opting to list on the Exchanges.

NSE is at the forefront in recognising the future needs of the SME sector and is continuously working with regulators for facilitating the start-ups and fintech companies to tap alternative funding mechanism. At NSE, a separately defined eligibility criteria have been evolved which is applicable for the technology start-ups to raise funds through the EMERGE platform.

Understanding the fact that SMEs continue to face constraints in obtaining adequate finance, particularly in terms of their ability to convert their trade receivables into liquid funds, the Receivables Exchange of India Limited (RXIL), was established to provide TReDS Platform. It is jointly promoted by the National Stock Exchange of India Ltd. (NSE), and Small Industries Development Bank of India (SIDBI).

RXIL's TReDS platform integrates MSMEs with their Buyers (PSUs / Govt. Departments (Central & State) / Corporates) and multiple financiers on the same platform. TReDS has the potential to transform the growth of the MSME sector in India.

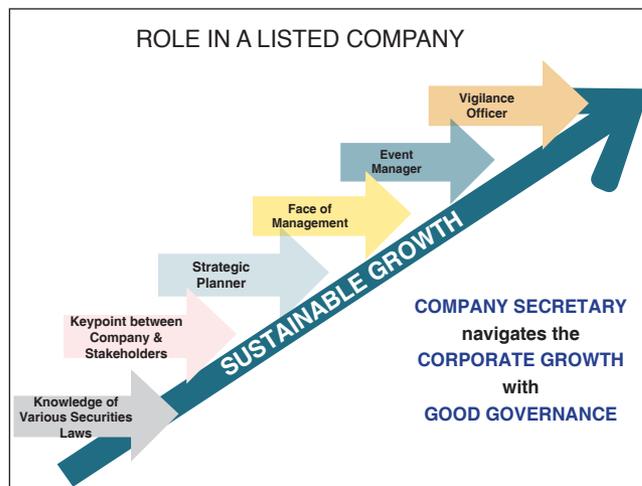
However, after seeing a promising growth path until 2018, the SME sector started slipping in FY 2019-20 and came under huge distress due to prolonged economic slowdown, which has been further severely impacted by COVID-19 pandemic and the nationwide lockdown and restriction imposed to control the pandemic. The requirement for funds to run the business is the paramount need of the entrepreneurs. Though raising of funds through the IPO mechanism may be not the immediate solution to the business, it is important that the entrepreneurs assess the impact of the pandemic on the organisation from the operational and financial perspectives, their preparedness to raise the funds whether debt or equity, managing cash flow across the supply chain, and addressing the key risks to ensure business continuity.

While formulating the action plan and the steps to be taken to mitigate the impact of the pandemic, it is important to be prepared for all scenarios. It is important that the entrepreneurs adapt to a new set of rules and be mindful to reconfigure their business strategy, to rethink and design newer ways to infuse capital into their business, creating an organization structure which can facilitate sustainability, growth and which is credible to the investors. Meeting with all the compliances, statutory requirements, and obligations so as to have higher credibility and confidence among the stakeholders is also necessary. The companies should have a credible plan for utilizing the capital effectively so that the promised growth plan is achievable.

ROLE OF COMPANY SECRETARIES

It is here that the fraternity of Company Secretaries (CS) have a major role to play and reinforce their status as an important stakeholder in the SME ecosystem. CS as governance professionals are expected to guide their clients to explore and prepare themselves for the alternate funding channels.

The CS, whether in employment or in practice, plays an important role not only in the journey of listing but also in post listing, as they assume the key responsibility of interface between the management, the exchange and other regulatory and statutory bodies.



TURNAROUND OF THE SME'S POST ECONOMIC SLOWDOWN AND COVID-19

During the lockdown, the stock exchanges, along with industrial associations and professional associations, are doing a series of webinars to reach the SMEs and start-ups, and explain them the benefits and process of listing. A lot of interest has been shown by entrepreneurs. With the concerted efforts of all the stakeholders, the SMEs and start-ups would not only sail through these tough times, but also turnaround with good performance, thus taking India on course for achieving the vision of this government.

“ The CS, whether in employment or in practice, plays an important role not only in the journey of listing but also in post listing, as they assume the key responsibility of interface between the management, the exchange and other regulatory and statutory bodies.

Post COVID-19, India could be the brightest spot among the emerging economies when it comes to attracting FDI. "Make in India" will become a success provided the opportunities presented are converted into realities on merit. The global economic slowdown will mean that first world economies –will be looking out for low-cost outsourcing solutions. Whether it is IT, finance or non-core items, India can rise up to the challenge. At this juncture, the SME platforms like EMERGE is expected to take significant steps to enable growing enterprises to come to the SME platform for approaching capital markets as a much more viable option for raising equity capital in an efficient manner and scale up the businesses to compete globally. ☑

Micro, Small & Medium Enterprises – The Way Forward

MSMEs, which are the backbone of the Indian economy in terms of their contribution to the country's GDP, Exports, employment generation and inclusive growth, require to be nurtured effectively so that they maintain their health. The COVID-19 pandemic has been a setback to the MSME sector and its impact is expected to push many entities into a long battle for survival. The Government has taken a lot of fiscal, regulatory and stimulus measures which are expected to provide some relief to the MSMEs. This article analyses the various measures taken by the Government.



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INTRODUCTION

The Micro, Small and Medium enterprises (MSMEs) are considered as the engines of economic growth. They promote equitable development all over the world. In India, with a bid to promote the growth of these industries, the MSMED Act was passed in the year 2006. MSMEs foster entrepreneurship. These enterprises essentially work in the informal space and cater to the needs of large industrial houses, both in the public as well as the private sector.

The promotion of inter-firm linkages between large firms and MSME through sub-contracting and setting up ancillary units both in the public and private sectors has been an important dimension of India's MSME policy. Any growth of ancillary units and sub-contracting would be advantageous to the MSME sector by way of assured marketing, covered technical assistance, finance, and supply of raw materials and training.

Apart from providing support to the large industries, MSMEs have played an important role in employment generation. A majority of these enterprises are located in six major states namely, Uttar Pradesh, Maharashtra, Tamil Nadu, West Bengal, Andhra Pradesh and Karnataka.

NSIC AND SIDO

Many measures have been taken in order to promote the growth of these industries. National Small Industries Corporation Ltd.

(NSIC) was established 1955 by the Government of India to promote, aid and foster the growth of small-scale industries in India. It offers several technical services to SMEs through its Technical Services Centres, Extension Centres, Software Technology Parks and Technology Transfer Centres.

Small Industry Development Organisation (SIDO), established in 1954, provides a wide spectrum of technical services to the small industries sector. These include common facilities for testing, tool room services, technology upgradation, modernisation, quality improvement, training for entrepreneurship development, assistance for exports, pollution and energy audits etc.

PRESENT SCENARIO

As the country is reeling under a crisis, almost all MSMEs are out of action due to lockdown, choking all production activities across sectors. There are several reports that indicate how badly MSMEs are affected and have no money to pay their employees.

Leaders, Industry experts and industry bodies - everyone has appealed the government to substantially enhance its relief package for the MSME sector, which contributes to over 30 per cent of India's GDP. Many experts opined that, taking into consideration the widespread havoc wreaked by the COVID-19, the government needs to come up with a constant tracking mechanism and should announce immediate relief measures to shore up the confidence in this very important sector which has taken a beating due to the pandemic. A stimulus financial package is required to re-energise the market economy.

AATMANIRBHAR BHARAT – A SELF RELIANT INDIA

On 12th May, 2020, during the Prime Minister's address, a ₹20 lakh crores economic package was announced under the Aatmanirbhar Bharat scheme with an aim of making the country independent against the cut-throat competition in the global supply chain. This package included a major stimulus to the post pandemic industrial world, and it helps to empower the poor and migrant labourers adversely affected by COVID-19.

The Ministry of Finance immediately announced details of the economic package in which, out of the fifteen relief measures, six were aimed to rejuvenate the lockdown-hit India's MSME sector.

“ Many experts opined that , taking into consideration the widespread havoc wreaked by the COVID-19, the government needs to come up with a constant tracking mechanism and should announce immediate relief measures to shore up the confidence in this very important sector which has taken a beating due to the pandemic. A stimulus financial package is required to re-energise the market economy.

Ministry of MSME has reiterated that it has put in place a very strong handholding mechanism for MSMEs and new entrepreneurs in the name of Creation and Harmonious Application of Modern Processes for Increasing the Output and National Strength (CHAMPIONS) which was recently launched by the Prime Minister on 1st June, 2020. The key measures provided are detailed as follows:

- **Equity Funding:** The Ministry of Finance has announced a ₹50,000 crores funding into a fund of funds specifically for the MSME sector aimed towards capacity expansion and these funds would in turn be invested in daughter funds of size of ₹ 10,000 Crores. The daughter funds would in turn invest into the equity of companies going for listing in the SME space. However, while MSMEs can look at this opportunity, there would remain the need for upskilling the workforce and developing technical solutions. To achieve the goals of self-reliance and import substitution as set by the Prime Minister of India, strategic infrastructure and policy development is required for enhancing human capability and R&D.
- **Definition of MSME:** There was also a pressing need to change the way a MSME is defined. The MSME segment in India has traditionally been defined using the investment in plant and machinery as the metric since the investment in assets can be verified and measured. However, we must also appreciate that each sector has its own unique capital requirements and standard revenue and growth rates. Hence, in today's complex business environment, turnover and number of employees are becoming more relevant matrices for consideration of coverage.

The metrics used to define an MSME as per the 2006 Act are:

Nature of activity of the enterprise	Investment in Plant & Machinery – Enterprises engaged in Manufacturing	Investment in Equipment – Enterprises engaged in rendering of services
MICRO	Not exceeding 25 lakhs	Not exceeding 10 lakhs
SMALL	More than 25 lakhs but not exceeding 500 lakhs	More than 10 lakhs but does not exceed 200 lakhs
MEDIUM	More than 500 lakhs but not exceeding 1000 lakhs	More than 200 lakhs but not exceeding 500 lakhs



After 14 years since the MSME Development Act came into existence in 2006, a revision in MSME definition was announced in the Aatmanirbhar Bharat package on 13th May, 2020.

As per the new definition of MSMEs announced in May 2020, the investment limit has been revised upwards and an additional criterion of turnover has been introduced.

The distinction between manufacturing and services has been done away with.

Now, a micro firm is one with investment up to Rs 1 crore and turnover less than Rs 5 crores, the small firm has investment up to Rs 10 crores and turnover up to Rs 50 crores and medium-firm will be one with an investment of up to Rs 20 crores and turnover under Rs 100 crores.

Classification	Micro	Small	Medium
MANUFACTURING & SERVICES	Investment < 1 crore and Turnover < 5 crores	Investment < 10 crores and Turnover < 50 crores	Investment < 20 crores and Turnover < 100 crores

Apart from raising the investment limits for classifying MSMEs, the government also brought in annual turnover as an added metric to define such units. The existing definition relies solely on self-declared investment on plant and machinery and has wide variations based on type of business.

Notification was given by the Ministry of Micro, Small and Medium Enterprises dated 1st June, 2020, (S.O. 1702(E).) The new definition will come into effect from 1st July, 2020.

- **Collateral free loans:** Amidst nationwide reports of MSMEs running short on liquidity since last year, the government also announced loans worth Rs 3 trillion

for 4.5 million units. The collateral-free, automatic loans will be available till 31st October, but only MSMEs with outstanding loan up to Rs 25 crores or with a turnover up to Rs 100 crores will be eligible.

- **Insolvency:** The government has raised the minimum threshold to initiate insolvency proceedings to Rs 1 crore from Rs 1 lakh, which largely insulates MSMEs.

The highlights may be summarised as follows:

- For stressed MSMEs, subordinate debt provision of INR 200 billion (US\$2.65 billion) has been announced for 200,000 MSMEs.
- Equity infusion worth INR 500 billion (US\$6.6 billion) through special fund for MSMEs that have viable operations but need handholding due to COVID-19.
- A fund of funds with corpus of INR 100 billion (US\$1.3 billion) will be set aside to assist the capacity expansion of these units, including enabling them to get listed on the market should they choose that.
- Global tenders not allowed for government procurement of up to INR 2 billion (US\$26.5 million).
- To compensate for cancelled trade fairs, the Indian government will set up online market linkages.

CHALLENGES FACED BY MSMEs

Despite the sector's strategic importance in overall industrialisation strategy and employment generation, as well as the opportunities that the Indian landscape presents, the MSME sector confronts several challenges. Technological obsolescence and financing problems have been associated with the sector since long. Also, constraints such as high cost of credit, low access to new technology, poor adaptability to changing trends, lack of access to international markets, lack of skilled manpower, inadequate infrastructure facilities, including power, water, roads, etc., and regulatory issues related to taxation (state and central), labour laws, environmental issues etc. are also linked with its growth process.

- **Conventional Borrowing:** Many MSME units still access credit through the traditional borrowing models. While such a model works well with micro enterprises requiring low investment, small and medium enterprises would need higher investments and hence these traditional/conventional methods of borrowing may not be feasible.

Many measures have been introduced for improving access to finance, however, there should be a change in the way MSMEs function. They should adapt themselves to the digital mode. The traditional lending system by banks is based on financial statements and collateral of the borrower. With increased availability of data from several sources, including GSTN, income tax, credit bureaus, etc., it is now possible to appraise the MSME loan proposals expeditiously by doing due diligence in the online mode itself.

In fact, Mr. Uday Kotak, President of CII (Confederation of Indian Industry) opined that MSMEs must not just rely

on conventional sources of funding, such as banks but also tap venture capital and angel investors to bolster their equity base to tide over the damaging impact of the pandemic.

- **Non-Performing Assets (NPA's):** From the International Monetary Fund's policy tracker (that tracks key economic responses to the COVID-19 pandemic across 192 economies), these policy responses can be broadly categorised into: (a) loan guarantees and immediate liquidity provision; (b) loan extensions and penalty waivers on repayment delays and (c) interest rate reductions on future loans.

In line with the global response, the Government of India slashed interest rates, increased limits on NPAs to prevent triggering insolvency and offered payments from the government's share of Employee Provident Fund (EPF) to avoid layoffs. Several leading banks have announced special purpose loans at reduced rates for up to 10-20% of the firms' working capital limit.

- **Infrastructure:** Though India has a vast pool of technical talent with a well-developed intellectual infrastructure, the country lags behind in the matter of developing and adapting new technologies in the MSME sector. The MSME sector today needs an effective information system to support and deliver information to different users.

There is a need for infrastructural development - overall facilities such as railways, waterways, roadways and airways, proper channels of telecommunication, adequate supply of power and sector specific facilities such as Tool Rooms, Testing Labs, Design Centres, etc.

- **e-Commerce:** Of late, the availability of online trade platforms is also emerging as a key enabler for MSME exports. Traditional handicraft clusters and independent artisans and entrepreneurs can stay connected to the world and operate in the global market via e-commerce platforms. However, since most of the micro units operating in the country still use conventional techniques, they may not be able to utilize the platform.

REGULATOR'S ROLE

The Ministry of Corporate Affairs (MCA) is the regulator for all the Companies and Limited Liability Partnerships (LLPs) registered in India. As such, in order to oversee the smooth running of the Companies, the Ministry deploys various forms which need to be filed by the Companies and LLP's at regular intervals.

- MSME Form-1:** This form has been notified by the MCA in January 2019. This form is to be filed by those specified companies whose outstanding payment to MSMEs suppliers is exceeding 45 days.

This return contains the following details:

- amount of payment due; and
- reasons for the delayed payment



“ Though India has a vast pool of technical talent with a well-developed intellectual infrastructure, the country lags behind in the matter of developing and adapting new technologies in the MSME sector. The MSME sector today needs an effective information system to support and deliver information to different users.

This form will enable the regulators to seek data about the overdues to the MSMEs, thereby protecting the interest of groups of small companies or business.

- b. Companies Fresh Start Scheme (CFSS):** As per the provisions of the Companies Act, 2013, all companies are required to follow statutory compliances annually. These include the Annual Return, Financial Statements and all the other necessary forms, documents and reports that are specified.

Non – compliance of the same results in the imposition of penalties and fines. However, given the present scenario, the world is on a lockdown currently due to the unprecedented situation regarding public health and safety caused by the COVID-19 pandemic. And hence, MCA has launched the CFSS (Companies Fresh Start Scheme), 2020. The time for complying with the law – filing of forms and returns has been extended so as to ease the situation considering the tough position being faced. The scheme has also been extended to filing of overdue pending forms irrespective of their delay. The pending filing compliances can thus be completed without any hassles. Immunity is granted from additional fees as well as prosecution with respect to delayed filing.

The CFSS is applicable between the 1st of April 2020 and the 30th of September 2020.

Further, the Inactive Companies have also been given certain relief measures under this scheme:

Dormant Status: An inactive Company may apply for dormant status under Section 455 of the Companies Act, 2013 by way of filing of e-Form MSC – 1 along with the prescribed fees.

Strike Off: A Company may apply for striking off the name of the company from the Register of Companies by filing Form STK -2.

Form ACTIVE: For the ‘ACTIVE non-compliant’ companies, an extended timeline between 1st April 2020 and 30th September 2020 has been provided to file the ACTIVE form.

For all the above applications, normal fee would be levied. There would be no additional fee till 30th September, 2020.

THE WAY FORWARD

India’s cultural diversity provides significant number of regional village industries manufacturing typically traditional and heritage-based products ranging from traditional textile weaving to pottery and art and even medicine. Every state has its own culture and a unique village industry. These industries have a lot of potential to export their products to global markets. Given the right push in terms of exposure to global markets, financial support and infrastructural facilities, these industries can play a significant role in the export sector.

Large portion of the traditional and village industries is in the un-organised / informal sector and includes industries like handloom, handicraft, leather, cottage match, vegetable oil, gud/khandsari, sericulture and pottery. The traditional industries also include Ayurveda and yoga. Yoga had also percolated to a significant extent into the urban – semi-urban belt and is a fast-growing market. The focus is now on building immunity and what better than Yoga to boost resistance power and fight the pandemic?

Another important sector is the handloom sector which plays a very important role in the village industry economy. These handlooms are exported to many countries including the US and UK. Indian handicraft items are also increasingly being exported and are much sought after products in the international market. These include woodware, hand printed textiles and scarves, embroidered and crocheted goods, shawls, zari and zari goods, imitation jewellery and miscellaneous handicrafts such as lace, toys, etc.

Hence, it can be seen that the export potential is huge. Local industry bodies like the Council of Leather Exports, Handloom Export Promotion Council (HEPC), and Export Promotion Council for Handicrafts (EPCH) need to work in tandem with central and state government to promote these products in markets which are not yet tapped.

Some of the key national imperatives to propel India into the next wave of growth include: Make in India, Ease of doing business and the very new Vocal for Local.

ROLE OF WOMEN ENTREPRENEURS

Women entrepreneurs should be encouraged to participate in the MSME growth story. There are nearly three million MSME's with full or partial female ownership.

There is considerable emphasis on promotion of women entrepreneurs and encouraging greater participation of women in the Indian MSME growth story. Many programs such as Entrepreneurship Development Programmes (EDPs) are organized for women. There are various programmes and schemes of MSME Ministry, NSIC, KVIC and Coir Board for conducting exclusive training programmes for women. Grants and special concessions are provided for women under the Trade Related Entrepreneurship Assistance and Development (TREAD) and Rural Employment Generation Programme (REGP).

Incubation cells can be developed to provide MSMEs with mentoring and technology support, and shared R&D facilities.

A PUSH TO EXPORTS

As seen above, export promotion from the MSE sector has immense potential. It has to be accorded a high priority. To help MSMEs in exporting their products, the following facilities/incentives are provided:

- i. Products of MSME exporters are displayed in international exhibitions
- ii. To acquaint MSME exporters with latest export packaging standards, techniques, etc., training programmes are organised in collaboration with the Indian Institute of Packaging;
- iii. Marketing Development Assistance (MDA) Scheme has been started

Amidst the crisis, the Government needs to give an extra push to MSMEs in order to ramp up export of consumer goods so as to reap the advantages of comparative advantage that can be available in the post pandemic scenario.

The Government can give a direct impetus to improve exports in the food products manufacturing segment. Given the present situation, India can scale up exports - fruits, vegetables, processed food, cereals and tea are some of the items which can be exported. India should think long term and build capabilities

OPPORTUNITIES IN THE WAKE OF COVID-19

Healthcare is the need of the hour and MSMEs can work in the following areas:

- Manufacturing of personal protective equipment (PPE) and face masks, as the COVID-19 pandemic has fundamentally changed social behaviour, public health and hospital needs, and created new demand;
- Manufacturing of low-cost medical devices, and medical accessories such as surgical gloves, scrubs, and syringes;
- Low-cost surgical procedures to reduce the cost of healthcare;
- Telemedicine; and
- Diagnostic labs.

Other areas that offer opportunities for MSMEs include information technology, pharmaceutical, chemical, automotive, renewables, gems and jewellery, textile, and food and agriculture.

MSMEs should seize the opportunity, utilize the incentives provided by the Government and become accelerators to our economy. As per the official estimates, there are about 63.05 million micro industries, 0.33 million small and about 5,000 medium enterprises in the country.

The Indian MSMEs sector is poised for rapid growth, given initiatives like 'Make in India' coupled with the Government's efforts to attract greater FDIs. 

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Understanding the Emergency Credit Line Guarantee Scheme

The Government of India and the Reserve Bank of India have provided relief measures across all sectors, including Micro, Small and Medium Enterprises (MSMEs), due to the distress caused by the ongoing pandemic. Several reforms have been introduced for MSMEs, especially the Rs. 3 lakh crore collateral free automatic loans in the form of credit guarantee known as the Emergency Credit Line Guarantee Scheme (ECLGS). It is essential to understand the contours of the ECLGS, in order to assess its importance and benefits and its domino effect on reviving the economy of India.



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INTRODUCTION

To achieve something whether in life, personally or professionally, one needs to begin at some point and beginnings are always small and as rightly said by Mr. Richard Branson, 'All big things start small'. As also, everyone in their journey of growth and success, faces hurdles and obstructions, and finds solutions and measures to overcome them. Hence, factors such as 'perseverance', 'resilience' and 'support' are significant, to nurture growth. The importance of starting small and the said factors are relevant in the case of Micro, Small and Medium Enterprises ("MSME") in India. MSMEs are essentially small business units/service providers mushrooming across various sectors such as auto components, textiles, construction and transport operators, etc. MSMEs play a substantial role in the growth of India and its economy, it is a mode of self-employment, creates jobs and most importantly, it is a means of livelihood for millions of people in India and aids towards the upliftment of the society.

The significance of the MSME sector in India, is evident from the following facts:

- a) *The MSME sector contributes in a significant way to the growth of the Indian economy with a vast network of about 6.3 crore units and a share of around 30 per cent in nominal Gross Domestic Product in 2016-17 - Annual Report of Ministry of MSME – 2018-19.*

- b) *As per the 73rd round of National Sample Survey (NSS) conducted during the period 2015-16, the estimated employment in MSME sector was around 11 crore. Within MSME sector, each of the three sub-sectors, namely, trade, manufacturing and other services accounted for about a third of total employment. Around 50 per cent of the total MSMEs operate in rural areas and provide 45 per cent of total employment. Interestingly, the micro enterprises account for 97 per cent of total employment in MSME sector - Annual Report of Ministry of MSME – 2018-19.*
- c) *The share of the MSME sector in total manufacturing output was higher at 45% - Report of the Expert Committee on MSMEs dated June 25, 2019 with Mr. U.K. Sinha as the Chairman.*
- d) *The share of MSME sector in India's merchandise exports stood at around 48 per cent in 2018-19 – Ministry of MSME, Government of India, July 2019.*

The above facts had been stated by the Governor of Reserve Bank of India (RBI) in his speech on MSMEs – Challenges and Way Forward on March 6, 2020, as part of the 15th ASSOCHAM Annual Bank Summit. The Report of the Expert Committee on MSMEs dated June 25, 2019, chaired by Mr. U.K. Sinha, on the behest of the RBI, provided a comprehensive review of the sector, identified causes, studied the experience of other countries and proposed long-term solutions for its economic and financial stability. Several recommendations have been implemented, however, there is a need to expedite implementation of all other recommendations in order to completely unlock the potential of the MSME sector. The contribution of MSMEs is commendable despite the various bottlenecks it faces such as delayed payments, lack of access to formal credit, GST implementation, effects of demonetisation, etc. The importance and evolving nature of MSMEs necessitates continual measures to support it and put in place legal frameworks and policies.

COVID-19 RELATED REFORMS FOR MSMEs

The ongoing pandemic due to the novel coronavirus and the subsequent lockdown with uncertainty on resumption of full normalcy, has caused great turmoil across various industries



and market segments, and the MSMEs are no exception to the same and in fact are facing more distress and are on the brink of fighting for survival. Whilst the RBI and the Government of India have rolled out several relief measures due to the unprecedented stress caused by the pandemic, the Hon'ble Prime Minister's vision of 'Make in India' and 'Aatmanirbhar Bharat' emphasizes the need for supporting and nurturing the MSME sector in India. As part of the Rs. 20 lakh crore mega stimulus package, the Hon'ble Finance Minister announced key reforms for the MSME sector viz.:

- (i) Rs. 3 lakh crore collateral free automatic loans for businesses including the MSMEs;
- (ii) 'Udyam se Udyog ka Naya Bharat' – Equity support of Rs 20,000 crore through Subordinate Debt for stressed MSMEs;
- (iii) Rs. 50,000 crore equity infusion through MSME Fund of Funds;
- (iv) Amendment of definition of MSMEs;
- (v) 'Local hoga Global' Tenders by global companies disallowed for Government procurement of up to Rs. 200 crore in order to support the MSMEs from unfair competition; and
- (vi) other interventions for MSMEs such as release of receivables by Government of India and Central Public Sector Enterprises to MSMEs within 45 days, usage of Fintechs to enhance transaction based lending using the data generated by the e-marketplace, etc.

All the key reforms are welcome and indeed a strong indicator of the support towards MSMEs, in this unprecedented situation. In order to understand its full impact, it is necessary to analyse the key reforms, especially the Rs. 3 lakh crore collateral free automatic loans for businesses including MSMEs in the form of credit guarantee since the same will benefit about 45 lakh units through resumption of operations and safeguarding jobs, as estimated by the Government of India. Whilst there are a host of credit guarantees for the MSMEs, a study of the current ECLGS is imperative to understand from the standpoint of a business enterprise/MSME and lending institutions, its importance in the current situation and the impact of the same on the economy of India.

“ Whilst the RBI and the Government of India have rolled out several relief measures due to the unprecedented stress caused by the pandemic, the Hon'ble Prime Minister's vision of 'Make in India' and 'Aatmanirbhar Bharat' emphasizes the need for supporting and nurturing the MSME sector in India.

The Cabinet chaired by the Hon'ble Prime Minister, approved the said additional funding through the introduction of the Emergency Credit Line Guarantee Scheme (ECLGS) on May 20, 2020. The Operational Guidelines came into effect as on May 23, 2020 and the same is being administered by the National Credit Guarantee Trustee Company Limited (NCGTC), a wholly owned company floated by the Government of India, to act as trustee to manage and operate the various credit guarantees funds.

SALIENT FEATURES OF ECLGS

Particulars	Details
Name of the Product	Guaranteed Emergency Credit Line (GECL)
Purpose of the Scheme	A pre-approved sanction limit of upto 20% of loan outstanding as on February 29, 2020 with a 100% guarantee coverage.
Date of commencement and Validity	ECLGS is in force from May 23, 2020 and will be valid up to October 31, 2020 or till the amount of Rs 3 lakh crore sanctioned under the ECLGS, whichever is earlier.
Eligible Borrower	<ul style="list-style-type: none"> Business Enterprises / MSMEs with outstanding loans (including loans covered under Pradhan Mantri Mudra Yojana (PMMY) across all Member Lending Institutions up to Rs. 25 crore, as on February 29, 2020 and annual turnover of up to Rs. 100 crore in FY 2019-20. ECLGS is valid for existing customers of the Member Lending Institutions with a borrower account. The account needs to be less than 60 days past due as on February 29, 2020 in order to be eligible under the ECLGS.
Non-Eligible Borrowers	Business Enterprises / MSME borrower accounts which are Non-Performing Assets or have been classified as Special Mention Account-2 status as on February 29, 2020 and loans availed by individuals, in their individual capacity.
Member Lending Institutions	<ul style="list-style-type: none"> All Scheduled Commercial Banks Financial Institutions Non-Banking Finance Companies (NBFC) and Housing Finance Companies (HFC), which as on February 29, 2020 are in operation for atleast 2 years and maintain the requisite Capital Adequacy norms, as prescribed by the RBI. <p>All eligible lenders are required to enrol as a Member Lending Institution with the NCGTC and submit an undertaking at the time of enrolment.</p>
Loan Amount	20% of the total outstanding loans up to Rs. 25 crore as on February 29, 2020 across all Member Lending Institutions, subject to meeting of eligibility criteria.
Interest Rate	Subject to a maximum of 9.25% p.a. - for Banks and Financial Institutions; and 14% p.a. – For NBFCs / HFCs.
Processing Fees and Other Charges including Prepayment Charges	<ul style="list-style-type: none"> No additional processing fees will be charged to the Eligible Borrowers No penal interest on non-compliance of the already accepted terms of the existing credit facilities and no prepayment charges on loans availed under ECLGS.
Tenor of Loans	The terms of the loans under ECLGS will be for a tenor of 4 years with a moratorium of 1 year and the principal amount to be repaid in 36 instalments.
Security	No additional collateral required to be provided by the Eligible Borrower. Member Lending Institutions will have to create a second charge on the cash flow and security provided for primary facility, within three months of the disbursement.
Key Responsibilities of Member Lending Institutions	<ul style="list-style-type: none"> To open separate account for facility disbursed under ECLGS To promote and create awareness of ECLGS by hosting the details of the ECLGS on the website and communicate to the Eligible Borrowers through emails and SMS Issue of no-objection certificate, in case the Eligible Borrower wishes to borrow more than 20% of outstanding loan amount from a particular Member Lending Institution To submit information on a fortnightly basis to NCGTC, <i>inter alia</i>, including details of Eligible Borrowers, amount outstanding as on February 29, 2020, loans sanctioned and disbursed, default ratio and Non-Performing Assets ratio, etc. Close monitoring of the account, safeguard of the primary security and ensure the claim towards the credit facility is lodged with NCGTC.

Source: Operational Guidelines on ECLGS

Details of the ECLGS can be accessed from the website of various banks as also of NCGTC (eclgs.com). Frequently Asked Questions have also been issued for ease of understanding the ECLGS by Eligible Borrowers and Member Lending Institutions.

ANALYSIS OF THE ECLGS

The ECLGS will provide an impetus to the Business Enterprises and MSMEs for their business operations, which will in-turn generate employment and help kick-start growth with visible and positive impact on the economy. It is pertinent to note that loans under ECLGS are available to all Business Enterprises meeting the eligibility criteria, even if they do not have a MSME registration. And with the proposed new definition of MSMEs coming into effect from July 1, 2020, there would be many business enterprises who will qualify as a MSME and get covered under ECLGS. Further, this facility is available not just for Eligible Borrowers with a normal account but even if the Eligible Borrower has defaulted on 2 EMIs (i.e. 60 Days Past Due), as on February 29, 2020. Hence, ECLGS is for existing customers and not for new customers. Further, from a risk management perspective, the profiling, assessment and Know Your Customer compliances may not be a hindrance, as the facility is being extended to existing customers only. ECLGS is an automatic and a pre-approved loan and Eligible Borrowers have an option to not avail this facility as well. The amount of loan that would be covered under ECLGS would be 20% of the loan amount outstanding up to Rs. 25 crore across all Member Lending Institutions. Hence, the current ECLGS provides an additional loan amount of up to Rs. 5 crore with a 100% guarantee cover. It is pertinent to note that there are a host of credit guarantees introduced for the MSME sector, however, the credit guarantee cover thereby was only for an amount not exceeding Rs. 10 lakh. The Member Lending Institutions are required to open a separate account for borrowers availing the ECLGS. Further, on invocation of guarantee, the Member Lending Institutions will be required to report the same to NCGTC and 75% of the payment would be received within 30 days and the balance on completion of recovery proceedings. With the support extended by the Government in terms of the guarantee, the ECLGS is a win-win from the perspective of lending institutions and Business Enterprises/MSMEs, as the Member Lending Institutions will extend loans based on the guarantee and the MSMEs will get money to restart their businesses with a 100% guarantee for upto 20% of its total outstanding amount. Considering the fact that credit facilities extended under the ECLGS are backed by an irrevocable and unconditional guarantee given by the Government of India, the RBI has vide its Circular dated June 21, 2020, prescribed zero percent risk weight on the credit facilities extended by Member Lending Institutions under the ECLGS. This is likely to result in greater and active participation from the Member Lending institutions in extending credit under ECLGS. However, due to the prevailing situation and subsisting lockdown and with a more cautious approach adopted, the Member Lending Institutions may put in place such eligibility criteria which could result in lower sanction/disbursal as compared to the eligible amount under the ECLGS.

Further, both, Member Lending Institutions and Business Enterprises/ MSMEs have responsibilities to shoulder. The Member Lending Institutions need to ensure that details of the ECLGS is put up on its website, undertake awareness campaigns, ensure no processing charges, penalty or prepayment fees are levied, reporting information on various data points to NCGTC and the Business Enterprises/MSMEs need to carefully utilise the money as there is a moratorium for one year but thereafter they would need to initiate repayment of principal and interest.

SUGGESTIONS

The success of ECLGS will depend on the active participation of the lenders (including the public and private sector) through sanctions and disbursement. The progress of ECLGS is being tracked through the various data points that Member Lending Institutions need to submit on a fortnightly basis, which would help in assessing the on-ground situation as well as enable scope of improvement, to make changes based on practical and operational challenges. Based on the information published by the Ministry of Finance, as of June 20, 2020, Banks from Public and Private Sectors have already sanctioned loans worth more than Rs. 79,000 crore, out of which, more than Rs. 35,000 crore had already been disbursed, under the ECLGS. Further, this had benefitted more than 19 lakh MSMEs. This exhibits that considerable amount has been sanctioned and disbursed from the time the ECLGS has commenced, however, there clearly is a need and appetite for more sanction and disbursement. Some recommendations that may be considered to aid in implementation of ECLGS, are as under:

“ The ECLGS will provide an impetus to the Business Enterprises and MSMEs for their business operations, which will in-turn generate employment and help kick-start growth with visible and positive impact on the economy. It is pertinent to note that loans under ECLGS are available to all Business Enterprises meeting the eligibility criteria, even if they do not have a MSME registration.

a) Active participation by Private Sector Banks/NBFCs/HFCs

Whilst the private sector lending institutions are sanctioning and disbursing the credit under the ECLGS, there is need for greater active participation from the private sector Banks/NBFCs/HFCs, in order to ensure effective roll-out and implementation of the ECLGS and ultimately aid in mitigating the distress faced by MSMEs. The participation of the private sector is an important factor in the success of the ECLGS.



b) Awareness and Promotions by Member Lending Institutions

Whilst, awareness and promotions of the ECLGS is being done across Social Media platforms, Websites, Ministry of MSMEs, etc., the same needs to be accelerated by the Member Lending Institutions by them reaching out to the Eligible Borrowers under ECLGS and educating them by conducting workshops through webinars, emails and SMSs.

c) Expand the Eligibility Criteria

Further, there seems to be a need to expand the eligibility criteria of Eligible Borrowers, by including new customers in addition to the existing customers, with some additional stipulations on risk profiling, credit appraisal and Know Your Customer compliances. This will provide a three-pronged benefit in terms of borrowers, lending institutions and Financial Inclusion. The credit guarantee would help new customers to easily avail credit and cover a portion of their loan through the guarantee and will aid as a helping hand to mitigate the distress caused due to the ongoing pandemic. The lending institutions will be comfortable to extend credit and aid in credit disbursement during the prevalent situation. This extension of credit guarantee

to new customers would aid in the vision of Financial Inclusion by serving the underserved and uninitiated towards formal credit.

d) Sector Analysis

The Government could also initiate a sectoral analysis based type of industry, on which sector is able to gain credit facility under the ECLGS and for the sectors which are not able to derive benefit, to study and understand the hindrances and provide innovative solutions / some kind of impetus for lending institutions to enable such sectors to receive credit.

e) Extension of Scheme

As per the Report issued by CRISIL on *'The epicentre of an existential crises'* in June 2020, the financials of MSMEs would take a severe hit in this fiscal and sectors related to consumer discretionary, construction and exports will be hit hard. Further, as per the Report, the coverage of the credit guarantee scheme is ranked as 'slightly favourable' and credit growth as 'highly favourable'. Further, considering that the lockdown will be lifted in phases and a likelihood of a considerable delay on resumption of full normalcy, the validity of the ECLGS may be extended up to March 31, 2021.

Understanding the ECLGS, its benefits, responsibilities, across the various stakeholders, is the key to its mass proliferation and achievement of its purpose to help the MSMEs.

WAY FORWARD

As of today, the near future does seem uncertain on when life will be as normal as pre-Covid times. Indications on a second wave of the pandemic, a longer wait for a vaccine to eradicate the novel coronavirus, the border tensions between India and China, revival of the world economy, provide a clear warning that tough times will continue for longer than what is expected. This again propels and reiterates the need for resilience, perseverance and continued support to the MSME sector, from the government, regulators and the lending institutions. The current pandemic situation has been a game changer with respect to adoption of digital and online mechanisms and its consequent benefits. Hence, the need of the hour is to adopt technology for providing solutions towards the challenges faced by the MSME, beginning with the propagation of the Trade Receivables Discounting System which could be used as a repository of information on MSMEs and which would enable lending institutions to assess their credit worthiness and extend credit. The lending institutions need to develop specific products catering to the MSME segment. The MSMEs will need to re-think, re-imagine and re-define their strategies, products, customer segment, marketing techniques, in order to rejuvenate and emerge stronger than before. The solutions and measures would need to be modified, provided, extended and innovated to ensure survival, dreams and livelihoods of several Indians and provide a way forward towards an *'Aatmanirbhar Bharat'*. 

Recovery of Dues of Micro and Small Enterprises

The role of micro small and medium enterprises (MSMEs) as the engine of economic growth is doubtless. The Central Government has recently reclassified the MSMEs on the basis of the report of the Advisory Committee and enhanced the threshold limit to the manufacturing enterprises as well as service enterprises. There is time limit fixed for the payment of dues by the buyer and also interest in case of delayed payments. The Central Government paved the way for the composition of Micro and Small Enterprises Facilitation Centers in all States. In this article the procedure of recovery of dues of MSMEs through these facilitation centers and the role of practicing Company Secretaries in this regard is discussed.



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INTRODUCTION

Micro, small and medium enterprises are governed by Micro, Small and Medium Enterprises Act, 2006 ('Act' for short). Both the Central and the State Governments are encouraging these enterprises. Nearly 64 million units are registered under the Act. The GDP contribution to the country by such units is commendable. The units contribute 6.11% of the manufacturing GDP and 24.63% from service sector. It gives greater employment opportunities in India especially in rural areas. Many benefits are available under this Act to these units including easy recovery of the dues of MSMEs.

CLASSIFICATION OF MSMEs

An enterprise shall be classified as a micro, small or medium enterprise on the basis of the following criteria-

- a **micro** enterprise, where the investment in plant and machinery or equipment does not exceed Rs.1 crore and turnover does not exceed Rs.5 crores;
- a **small** enterprise, where the investment in plant and machinery or equipment does not exceed Rs.10 crores and turnover does not exceed Rs.50 crores; and
- a **medium** enterprise, where the investment in plant and machinery or equipment does not exceed Rs.50 crores and turnover does not exceed Rs.250 crores.

LIABILITY OF THE BUYER

Section 15 of the Act provides that where any supplier supplies any goods or renders any services to any buyer, the buyer shall make payment there for on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day, the day following immediately after the expiry of the period of fifteen days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier. The period agreed upon between the supplier and the buyer in writing shall not exceed forty-five days from the day of acceptance or the day of deemed acceptance.

The day of acceptance is the day of the actual delivery of goods or the rendering of services or where any objection is made in writing by the buyer regarding acceptance of goods or services within fifteen days from the day of the delivery of goods or the rendering of services, the day on which such objection is removed by the supplier.

Where no objection is made in writing by the buyer regarding acceptance of goods or services within fifteen days from the day of the delivery of goods or the rendering of services, the day of the actual delivery of goods or the rendering of services is considered as the day of deemed acceptance.

Section 16 of the Act provides that where any buyer fails to make payment of the amount to the supplier, as required the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank.

For any goods supplied or services rendered by the supplier, the buyer shall be liable to pay the amount with interest thereon.

Section 22 of the Act provides that where any buyer is required to get his annual accounts audited under any law for the time being in force, such buyer shall furnish the following additional information in his annual statement of account-

“ Where no objection is made in writing by the buyer regarding acceptance of goods or services within fifteen days from the day of the delivery of goods or the rendering of services, the day of the actual delivery of goods or the rendering of services is considered as the day of deemed acceptance.

- the principal amount and the interest due thereon (to be shown separately) remaining unpaid to any supplier as at the end of each accounting year;
- the amount of interest paid by the buyer in terms of section 16, along with the amount of the payment made to the supplier beyond the appointed day during each accounting year;
- the amount of interest due and payable for the period of delay in making payment (which have been paid but beyond the appointed day during the year) but without adding the interest specified under this Act;
- the amount of interest accrued and remaining unpaid at the end of each accounting year; and
- the amount of further interest remaining due and payable even in the succeeding years, until such date when the interest dues as above are actually paid to the small enterprise, for the purpose of disallowance as a deductible expenditure under Income Tax Act, 1961.

RECOVERY OF DUES BY MSEs

If the buyer does not pay the dues to the MSEs within the due date *i.e.*, 45 days, the MSE can approach the Micro and Small Enterprises Facilitation Council for the recovery of the dues.

MICRO AND SMALL ENTERPRISES FACILITATION COUNCIL

Section 20 of the Act provides that the State Government shall, by notification, establish one or more Micro and Small Enterprises Facilitation Councils (MSEFC), at such places, exercising such jurisdiction and for such areas, as may be specified in the notification.

Section 21 of the Act provides that a MSEFC shall consist of not less than three but not more than five members appointed from the following categories-

- Director of Industries, by whatever name called, or any other officer not below the rank of such Director, in the Department of the State Government having administrative control of the small scale industries or, as the case may be, micro, small and medium enterprises, who will be the Chairperson of the Council;
- One or more office-bearers or representatives of associations of micro or small industry or enterprises in the State; and

- One or more representatives of banks and financial institutions lending to micro or small enterprises; or
- One or more persons having special knowledge in the field of industry, finance, law, trade or commerce.

STATE GOVERNMENT TO MAKE RULES

Section 30(2)(a) of the Act gives powers to the respective State Government to make rules to the composition of the Micro and Small Enterprises Facilitation Council, the manner of filling vacancies of the members and the procedure to be followed in the discharge of their functions by the members of the Micro and Small Enterprises Facilitation Council. Almost all the States made the rules in MSEFC during the year 2006 and 2007. Many States like Chandigarh, Chhattisgarh, Jammu and Kashmir, Karnataka, Tamil Nadu, Telangana, Rajasthan, Andaman Nicobar Islands and Diu and Daman made new rules in supersession of the earlier rules during the year 2017.

TAMILNADU MSEFC

All the States framed rules for the recovery procedures through MSEFC. For example the Tamil Nadu MSEFC is taken for discussion. The Tamil Nadu State Government framed rules for MSEFC on 08.12.2006. In supersession of this rule the Tamil Nadu Government framed 'The Tamil Nadu Micro and Small Facilitation Council Rules, 2017' vide Notification dated 07.07.2017.

Rule 3 provides for setting up of the MSEFC. The Tamil Nadu Government has established four such councils at Chennai, Madurai, Coimbatore and Trichy. The Government may designate the Regional Joint Director of Industries and Commerce, Chennai in respect of the Chennai MSEFC and the General Manager of District Industries Center concerned in respect of MSEFCs of Trichy, Madurai and Coimbatore to officiate as the Secretary of the MSEFC to issue notices or orders on behalf of MSEFC. The Tamil Nadu Government shall provide a legal expert to these four zones. The concerned MSEFC can create a seal to show the jurisdiction of the MSEFC.

The Tamil Nadu MSEFC shall contain five members including the Chairman and the Members of MSEFC shall be appointed as per the provisions contained in section 21(1) of the Act. The Members appointed under Section 21(1) (ii), (iii) and (iv) shall cease to be a member if he or she ceases to represent the category or interest in which he or she was appointed.

When a Member of MSEFC dies or resigned or is deemed to have resigned or is removed from the office or becomes incapable of acting as a Member, the Tamil Nadu Government may appoint another person to fill that vacancy.

The Tamil Nadu Government may provide for the payment of honorarium, fees or remuneration to the Members.

PROCEDURE

The following are the procedures prescribed in the rules framed by the Tamil Nadu Government for the recovery of dues of MSMEs through MSEFC

- An aggrieved MSE can move a reference to the MSEFC having jurisdiction of the area.



- It shall be in the Form as prescribed in the Rules.
- The applicant shall provide his details such as Udyog Aadhaar Number (now Udyam Registration with effect from July 01,2020), date of filing the application, details of authorized representative, type of aggrieved MSE whether micro or small, name of the unit, address, District, State, mobile number, email id, the name of the respondent (buyer), the details of the respondent, category of the respondent, the principal amount claimed, the interest claims as on, the fees paid by the applicant along with the declaration.
- Claim for interest alone can be filed before MSEFC when the principal has already been paid by the buyer but not the interest.
- Required documents are also to be enclosed along with the application.
- A fee of Rs.1,000/- is to be paid by means of demand draft in favor of 'Joint Regional Director, Chennai' for Chennai MSEFC and in favor of the 'General Manager', District Industries Center in respect of Madurai, Trichy and Coimbatore zone.
- An undertaking is to be given that the aggrieved MSE unit has not moved a reference before the Civil Court for the same dispute.
- On receipt of the reference from the MSE, the Secretariat of MSEFC shall enter the data in the web portal.
- An acknowledgement of the receipt of reference shall be issued to the aggrieved MSE through email by the Secretariat of MSEFC.
- The MSEFC may examine the reference at preliminary stage to check regarding the fee or competency of MSE unit to file the reference.
- If the particulars entered by MSE Unit are not found to be satisfactory by the MSEFC, then the reference may be returned.
- The buyer will be furnished a copy of the application filed by the MSE Unit for his objection if any and his submission to the MSEFC.
- The meeting of MSEFC shall be conducted after giving seven days notice to the parties.
- In case of urgency, it can be called at short notice as the Chairperson may find suitable.
- All the notices/communications from MSEFC shall be communicated to the applicant including SMS and email.
- The MSEFC shall hold meeting at least once a month.
- The quorum of the meeting is three.
- The MSEFC shall conduct conciliation proceedings either by itself or seek the assistance of any Institute for conducting conciliation.
- If it is decided to refer the conciliation proceedings to any Institute (any Institution or Center providing alternative dispute resolution service under section 18(2) and (3) of the Act), the same will be intimated to the parties.
- The provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.
- The Institute shall conduct the conciliation proceedings and submit a report to MSEFC as soon as possible, usually within fifteen days from the date of reference to MSEFC.
- If the conciliation is not successful, then the said proceedings shall stand terminated.
- MSEFC shall either take up the dispute for further action for arbitration or refer the same to the Institute for arbitration (as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of section 7 of that Act).
- The MSEFC or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.

Recovery of Dues of Micro and Small Enterprises

- If the matter is referred to the Institute for arbitration, the Institute shall arbitrate the issue as per the provisions of Arbitration and Conciliation Act, 1996 and refer the award to the MSEFC.
- The MSEFC after finalizing the award by itself or receiving the award from the Institute shall consider the case and pass appropriate final orders on the reference.
- Any decision of MSEFC shall be made by the majority of the members present at the meeting.
- Every reference shall be decided within ninety days from the date of receipt of reference from the aggrieved MSE.
- The Secretariat of MSEFC shall update the proceedings of every meeting on the web portal.

SETTING ASIDE THE AWARD

An aggrieved person may file a petition for setting aside the award passed either by MSEFC or the Institute to which the reference is made to arbitrate. For this purpose, the petitioner has to deposit 75% of the award or decree amount. Pending disposal of the application to set aside the decree, award or order, the court shall order that such percentage of the amount deposited shall be paid to the supplier, as it considers reasonable under the circumstances of the case, subject to such conditions as it deems necessary to impose.

STATISTICS

Tamilnadu Statistics

The following table shows the year-wise disposal and the amount realised by the Tamil Nadu MSEFC from 2011 – 2012 to 2018 – 19:

Year	MSEFC sittings	No. of cases disposed	Amount realized (Rs. in lakh)
2011 – 12	15	38	233.86
2012 – 13	35	115	396.65
2013 – 14	18	62	556.52
2013 – 15	27	45	233.93
2015 – 16	9	12	78.57
2016 – 17	28	99	1924.49
2017 – 18	24	83	829.65
2018 – 19	38	104	1218.62
Total	194	558	5472.29

Source: www.indcom.tn.gov.in/pdf/MSEFC_State_ach.pdf.

All India statistics

The following table gives the status of applications filed by MSEs before the MSE Facilitation Councils in India-

Description	No. of cases	Amount involved (in Rs. crore)
Applications filed by MSEs	46729	13763.90
Mutual settlements with buyer	3927	609.28
Applications disposed by MSEFC	3446	642.46
Cases currently under consideration by MSEFC	10835	3974.32
Applications rejected by MSEFC	7849	1679.33
Application yet to be viewed by MSEFC	20672	6651.96

Source: www.samadhaan.msme.gov.in.

OPPORTUNITIES TO COMPANY SECRETARIES

MSMEs offer a wide range of area of practice to the practicing Company Secretary in multifarious fields. Practicing Company Secretaries can act as advisors to MSMEs rendering services covering the financial, legal and regulatory aspects of the functioning of the MSMEs. The practicing Company Secretary can also play an important role in recovery of dues of MSEs by making claim on behalf of the MSEs before the MSEFCs and take part in conciliation proceedings either by the MSEFCs or the Institution to which the conciliation is referred to and also in the arbitration proceedings either by MSEFC or the institution of arbitration to which the arbitration is referred to by MSEFC.

CONCLUSION

The challenge before the government is ensure that the MSMEs continue to grow and develop, since they are the backbone of the Indian economy. However, the long winding COVID-19 pandemic has created new hurdles to the MSMEs. The Finance Minister announced certain relief measures to the MSMEs as detailed below-

- Credit guarantee of Rs. 3 lakh crores. It is for MSMEs that have an already outstanding loan of Rs 25 crore or those with a turnover less than Rs 100 crore. The loans will have a tenure of 4 years and they will have a moratorium of 12 months (that is, the payback starts only after 12 months). The loan should be taken before October 31, 2020.
- A subordinate debt scheme, worth Rs 20,000 crore, which will allow loans to MSMEs that were already categorized as 'stressed', or struggling to pay back. This scheme is not a full guarantee but a partial one.
- Creation of a fund with a corpus of Rs. 50,000 Crores to infuse equity into 'viable' MSMEs, thus helping them to expand and grow. The government will put in Rs 10,000 Crores and the institutions like LIC and SBI will fund the remaining amount.

Everyone is waiting with bated breath for the post COVID-19 days. It is hoped that the MSMEs will then be able to launch themselves into a growth path which will take the Indian economy to the next levels at a faster pace. The role of Company Secretary, either in employment or in practice will be a vital one in this regard. 

SME & Start-up platform of Stock Exchanges – Great opportunity for entrepreneurs

Considering the importance of SME sector in the overall context of the Indian economy, its growth and continued good health will to a large extent determine the direction in which the country is heading. The SME platform of BSE has made rapid strides, ever since its launch in March 2012. The relaxed guidelines for listing and compliance on the SME and Startup Platform and the flexibility of migration to the main board has attracted the SMEs and Startup on the BSE SME & Startup Platform. The article touches upon the applicable guidelines for SME listing and the benefits of listing on the SME platform.



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Small and medium enterprises (SME) have attracted the government's policy focus in recent times. The small-scale segment is a manifestation of India's socio-economic development model and has met with the country's long-term expectations in terms of contribution to GDP, industrial base, employment and exports. This segment forms a major part of India's industrial base. If India is to attain its aspiration of double-digit growth rates and a reduced poverty ratio, greater focus on the well-being of the Small and Medium Enterprises (SME) sector becomes a necessity. Alongside this focus, continued good health of SME sector will contribute in a big way towards financial inclusion which is one of the significant goals of this government.

The MSMEs primarily rely on bank finance for their operations and as such, all public policies primarily focus on ensuring timely and adequate finance to this sector. While banks are playing a major role in financing the MSME sector, alternative sources of finance such as Non-banking Financial Companies (NBFCs), equity financing, venture capital, seed capital etc. are increasingly gaining popularity amongst the SMEs.

INTRODUCTION OF SME PLATFORM

Recognizing the problems faced by SMEs, the Prime Minister task force in 2010 has recommended the setting up of a dedicated SME Exchange/Platform. Securities Exchange Board of India immediately started working on it and after

deliberating with Exchanges and various stakeholders framed the guidelines for SME Exchange/Platform. SEBI has come out with detail guidelines on SME Exchange through their various notices dated 18th May, 2010, 26th April, 2010 and 17th May, 2010. BSE Ltd. became the first Exchange to launch its SME Platform on 13th March, 2012.



GUIDELINES FOR SME EXCHANGE/ PLATFORM

The guidelines for listing have been made simpler to help SME companies in getting listed in cost effective manner. The brief guidelines for the same are:

- Issuer with post issue face value capital up to Rs.10 crores shall be compulsory listed under the SME Platform, Issuer with post issue face value capital between Rs.10 – 25 crores may get listed at SME Platform and Issue with post issue face value capital above Rs.25 crores has to necessarily listed at main board of the Exchanges.
- Net Tangible Assets should be minimum Rs.1.5 crores.
- The company should be minimum 3 years old.
- The company should have positive cash accruals in any one of the preceding 3 years.
- 100% underwritten issues and Merchant Banker/s shall underwrite 15% in their own account.

*The views expressed are the personal views of the author

- The Merchant Banker to the issue will undertake market making through a stock broker who is registered as market maker with SME Exchange. The Merchant Banker shall be responsible for market making for a minimum period of 3 years.
- The Company should not have been referred to the NCLT.
- There should not be any winding up petition against the company that has been accepted by a court or a Tribunal.
- Minimum Investment on the SME Platform should be of Rs.100,000/-
- Stock Exchange will be the approving authority for the Draft Red Herring Prospectus (DRHP).

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COMPLIANCES ON SME PLATFORM

Compliances under SEBI Listing Regulations 2015 (LODR)		
1	Regulation 7 (3) – Compliance Certificate certifying maintaining physical & electronic transfer facility	Within one month of end of each half of the financial year.
	The listed entity shall submit a compliance certificate to the exchange, duly signed by both that is by the compliance officer of the listed entity and the authorized representative of the share transfer agent, wherever applicable, within one month of end of each half of the financial year, certifying maintaining physical & electronic transfer facility either in house or RTA as applicable.	
2	Regulation 13 (3) - Statement of Investor complaints	Within Twenty-one days from the end of each quarter
	The listed entity shall file with the recognised stock exchange(s) on a quarterly basis, within twenty-one days from the end of each quarter, a statement giving the number of investor complaints pending at the beginning of the quarter, those received during the quarter, disposed of during the quarter and those remaining unresolved at the end of the quarter.	
3	Regulation 31 - Shareholding Pattern	Within 21 days from the half year end
	The listed entity shall submit to the stock exchange(s) a statement showing holding of securities and shareholding pattern separately for each class of securities, in the format specified by the Board from time to time within the following timelines - <ul style="list-style-type: none"> • one day prior to listing of its securities on the stock exchange(s); • on half yearly basis, within twenty-one days from the end of each half year; • Within ten days of any capital restructuring of the listed entity resulting in a change exceeding two per cent of the total paid-up share capital. 	
4	Regulation 33 - Financial Results	Within 45 days from half year end. And in case of Annual Financial Result, within 60 days from end of Financial Year
	The listed entity shall submit half yearly and year-to-date standalone financial results to the stock exchange within forty-five days of end of each half year, along with Limited Review. The listed entity shall submit Annual Audited standalone Financial results for the financial year, within sixty days from the end of the financial year along with the audit report and either with Statement on Impact of Audit Qualifications (applicable for audit report with modified opinion(s) or declaration (applicable for audit reports with unmodified opinion(s)). Provided that if the listed entity has subsidiaries, it shall, while submitting annual audited standalone financial results also submit annual audited consolidated financial results along with the audit report and Statement on Impact of Audit Qualifications (applicable for audit report with modified opinion). Provided further that, in case of audit reports with unmodified opinion(s), the listed entity shall furnish a declaration to that effect to the Stock Exchange(s) along with the annual audited financial result.	
6	Regulation 34 –Annual Report	Within twenty-one working days of it being approved and adopted in the annual general meeting
	The Listed entity shall submit to the stock exchange and publish on its website a copy of the annual report sent to the shareholders along with the notice of the annual general meeting not later than the day of commencement of dispatch to its shareholders. In the event of any changes to the annual report, the revised copy along with the details of and explanation for the changes shall be sent not later than 48 hours after the annual general meeting	

7	Regulation 40 (9) – Certificate from Practicing Company Secretary	Within one month of the end of each half of the financial year
	The listed entity shall ensure that the share transfer agent and/or the in-house share transfer facility, as the case may be, produces a certificate from a practicing company secretary within one month of the end of each half of the financial year, certifying that all certificates have been issued within thirty days of the date of lodgment for transfer, sub-division, consolidation, renewal, exchange or endorsement of calls/allotment monies.	
8	Reconciliation of Share Capital Audit. (SEBI- DP Reg.55A)	Within 30 days from quarter end
	Listed entities are required to submit Reconciliation of Share Capital Audit Report on a quarterly basis to the stock exchanges audited by a qualified chartered accountant or a practicing company secretary for the purpose of reconciliation of share capital held in depositories and in physical form with the issued / listed capital. The Reconciliation of Share Capital Audit Report is required to be submitted to the stock Exchange within 30 days from the end of the Quarter under regulation 55A of the SEBI (Depositories and Participants) Regulations, 1996.	
Other Compliance Requirements under SEBI Listing Regulations 2015. (LODR)		
9	Regulation 7 – Appointment of New Share Transfer Agent	
	In case of any change or appointment of a new share transfer agent, the listed entity shall enter into a tripartite agreement between the existing share transfer agent, the new share transfer agent and the listed entity, in the manner as specified by the Board from time to time. The listed entity shall intimate such appointment, to the stock exchange(s) within seven days of entering into the agreement.	
10	Regulation 14 – Listing Fees & Other charges	
	The listed entity shall pay all such fees or charges, as applicable, to the recognised Stock Exchange(s), in the manner specified by the Board or the recognised Stock Exchange(s).	
11	Regulation 29 – Notice for Board Meeting to consider the prescribed matters	
	The Company shall give an advance notice of at least 5 days for Financial Result as per regulation 29 1 (a) & in case of other matters as stated in regulation 29 1 (b) to (f) - 2 Working days in advance (Excluding the date of the intimation and date of the meeting) to Stock Exchange. The Company shall give an advance notice of 11 working days in case matter related to alteration in i) Securities ;ii) date of interest or redemption of Debenture/bond as per regulation 29(3) (a) ,(b).	
12	Regulation 30 – Disclosure of Price-Sensitive Information	
	The Company has to intimate to the Stock Exchange about the material events which will have a bearing on the performance / operations of the company as well as price sensitive information both at the time of occurrence of the event and subsequently after the cessation of the event. The listed entity shall first disclose to stock exchange(s) of all events, as specified in Part A of Schedule III, or information as soon as reasonably possible and not later than twenty-four hours from the occurrence of event or information.	
13	Regulation 30 – Outcome of Board Meeting (Schedule III Part A- (4)	
	The listed entity shall disclose the information to the Exchange(s), within 30 minutes of the closure of the meeting.	
14	Regulation 42 – Notice for Record Date \ Corporate Action	
	The Company must ensure that there is a gap of at least 30 days between 2 book closure and/or record date. The Company shall give an advance notice of at least 7 working days (Excluding the date of the intimation and record date/ book closure start date) to the Stock Exchange for corporate actions (Book closure/Record date) fixed for the purpose of corporate benefits like mergers, de-mergers, split, bonus, dividend, rights etc. The listed entity shall recommend or declare all dividend and/or cash bonuses at least five working days (excluding the date of intimation and the record date) before the record date fixed for the purpose.	
15	Regulation 43 – Declaration of Dividend	
	The Company has to declare and disclose the dividend on per share basis only.	
16	Regulation 44 – Voting Result	
	The listed entity shall submit to the stock exchange, within forty-eight hours of conclusion of its General Meeting, details regarding the voting results in the format specified by the Board.	
17	Regulation 46 - Company Website	
	The listed entity shall maintain a functional website containing the basic information about the listed entity. The listed entity shall disseminate the information as stated in Regulation 46 (2). The listed entity shall ensure that the contents of the website are correct & the listed entity shall update any change in the content of its website within two working days from the date of such change in content.	

18	Regulation 30(1) and 30(2) - SEBI Takeover Regulations 2011
	<p>30(1) Every person, who together with persons acting in concert with him, holds shares or voting rights entitling him to exercise twenty-five per cent or more of the voting rights in a target company, shall disclose their aggregate shareholding and voting rights as of the thirty-first day of March, in such target company in such form as may be specified.</p> <p>30 (2) The promoter of every target company shall together with persons acting in concert with him, disclose their aggregate shareholding and voting rights as of the thirty-first day of March, in such target company in such form as may be specified.</p> <p>The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within seven working days from the end of each financial year to every stock exchange where the shares of the target company are listed and the target company at its registered office.</p>
19	Regulation 7(2) - SEBI (Prohibition of Insider Trading) Regulations, 2015
	<p>7 (2) Continual Disclosures:</p> <p>(a). Every promoter, employee and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified;</p> <p>(b). Every company shall notify the particulars of such trading to the stock exchange on which the securities are listed within two trading days of receipt of the disclosure or from becoming aware of such information.</p> <p>(Transaction type include buy/sales/pledge/revoke/Invoke)</p>

FILING OF REPORTS WITH STOCK EXCHANGES

Pursuant to Regulation 10 of the Listing Regulations, an entity listed with BSE shall file the reports, statements, documents, filings and any other information with the recognised stock exchange(s) on the electronic platform as specified by the Board or the recognised stock exchange(s). Accordingly, as per BSE Circular No. DCS/COMP/20/2015-16 dated November 30, 2015 it is mandatory for filing of various information with the exchange in electronic mode through online web portal (<http://listing.bseindia.com>), effective from December 1, 2015, those filings that are not filed with the Exchange through the Listing Centre are liable to be considered as non-submission and consequent non-compliance with the Regulations. Compliance filing for entities other than those listed on the Exchange may be done through email to the designated ID i.e. corp.relations@bseindia.com.

MIGRATION FROM BSE SME EXCHANGE TO THE MAIN BOARD OF BSE

1. The company has the option to migrate to the main board in case the post issue face value capital exceeds Rs.10 crores and has to compulsorily migrate to the main board in case the post issue face value capital crosses Rs.25 crores.
2. Shareholders' approval to be sought by special resolution passed through postal ballot – The approval required in the postal ballot is that the votes cast by shareholders other than promoters in favour of the proposal to migrate to Main Board should be at least two times the number of votes cast by shareholders other than promoter shareholders against the proposal to migrate to Main Board.
3. To fulfill the eligibility criteria for migration to Main Board - The companies seeking migration to Main Board of BSE should satisfy the eligibility criteria as specified in 26 of SEBI (ICDR) Regulations, 2009 either at the time of

initial listing on SME platform or at the time of seeking migration to Main Board. However, same will not be applicable where the company had sought listing on SME platform by following the book building process and as per the requirements prescribed in 26(2) of SEBI (ICDR) Regulations, 2009.

BENEFITS OF SME PLATFORM

- Provides the SMEs with equity financing opportunities to grow their business from expansion to acquisition.
- Equity Financing lowers the Debt burden leading to lower financing cost and healthier balance sheet.
- Expands the investors' base, which in turn helps in getting secondary equity financing, including private placement.
- Enhances company's visibility. Media coverage provides SME with greater profile, visibility and credibility contributing to increase in the value of its shares.
- Greater incentive for the employees as they can participate in the ownership of the company and benefit from being its shareholders.
- SME sector will grow better on two pillars of financial system i.e. Banking and Capital Market.

The SME Platform of the Exchanges since inception has yielded tangible results by getting almost 550 SMEs listed and these entities have raised almost Rs.6500 crores creating market capitalization of approximately Rs. 35000 crores.

STARTUP ECO-SYSTEM

India in the last decade has experienced a phenomenal growth in Start-ups and became the third largest destination globally. The period was marked by inception of thousands of start-ups, unicorns and emergence of leaders in the areas



of e-commerce, robotics, Edu-tech, health-tech, bio-tech and fin-tech. These start-ups with innovative ideas need the right channels and guidance in terms of acceleration and scaling of requisite funds. One of the most pressing growth challenges faced by policy makers is how to further prepare the ground for start-ups to grow and create meaningful impact. BSE therefore launched the Start-up Platform on December, 2018 so as to offer a simple cost- effective, yet deeply impactful mechanism that enables both start-ups and investors.

GUIDELINES FOR START-UP PLATFORM

- The Startup should be in existence for minimum period of two years.
- The net-worth should be positive.
- They should be registered as Startup or their paid-up capital should be Rs.1 crore.

Since inception, 5 (five) Start-ups got listed on BSE Start-up Platform who have raised Rs.22.5 crores and market capitalization of these listed Start-ups is approximately Rs.78 crores.

CONCLUSION

Today the world is going through tough times because of the pandemic arising out of COVID-19. There has been lockdown and social distancing resulting into severe impact on business. MSMEs have been impacted the most. In these tough times Exchanges have stood in support of SMEs and Start-ups, so that they can raise funds and keep their business running and growing. Even during the lockdown period SMEs and Start-

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ups have raised funds and got listed. It is noteworthy to note that this is happening at a time when even large corporates have either postponed or cancelled their IPO owing to market condition. We have seen listing of 4 SMEs who have raised Rs.17 crores and 1 start-up which has raised Rs.3.75 crores.

In these tough times, Exchanges along with industry associations and in conjunction with professionals and professional bodies are conducting series of webinars so as to reach the SMEs and Startups explaining them the benefits and process of listing. There is lot of interest on the part of the entrepreneurs, who are in touch with the stock exchanges. We are sure that with the concerted efforts of all the stakeholders, the SMEs and Start-up would sail through these tough times. In the times to come the listed SMEs will become globally competitive and offer significant contribution to India's economic development and job creation. 

Recent Reforms for MSMEs in India amidst COVID-19 Pandemic

With around 31% contribution towards GDP and 45% of the exports of the country, the development of the MSME sector is an important driver of the Indian economy. This article aims to analyse the pre-COVID-19 and the present scenario of MSMEs, and also discusses the various schemes introduced by government to boost the sector. Through schemes like Credit Guarantee Fund Trust for Micro and Small Enterprises (CGTMSE), Aatma Nirbhar Bharat Abhiyan etc., the government has initiated reforms to bring liquidity by providing collateral free loans for the cash crunched MSMEs during the national lockdown. By the introduction of CHAMPIONS and MSME SAMBANDH portals, the government has started moving towards a more transparent and easy mechanism to cater to MSMEs.



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BACKGROUND

The Micro, Small and Medium Enterprises (MSMEs) generates nearly 80 million jobs, having a network of 36 million units¹ and manufactures more than 6000 products.

¹ Kumar, Vinay. "An Analysis of Growth of MSMEs in India and Their contribution in Employment and GDP of the Country." *International Journal of Interdisciplinary and Multidisciplinary Studies (IJIMS)* 4.2,187-191 (2017).

*The views expressed are the personal views of the authors.

In the context of COVID-19 Pandemic crisis, MSMEs have arisen as one of the top employment generators. According to Udyog Aadhaar Quarterly publication, number of MSMEs registered on December, 2019 is 83,70,447. Out of total registered MSMEs 88.62% (74,17,890) are Micro enterprises, 10.96% (9,17,401) are Small enterprises and 0.42% (35,156) are Medium enterprises. It is no surprise that it has surpassed the much-touted employment generator tech startups that increased from 8,900-9,300 in 2019 generating only 60,000 direct and 1.3-1.8 lakh indirect jobs in 2019. With a share of 14.20 percent of the total MSMEs in the country the state of Uttar Pradesh has the largest number of estimated MSMEs. West Bengal comes as close second with a share of 14 percent, followed by Maharashtra and Tamil Nadu at 8 percent. MSMEs are vital for development of a country. It enables for a sustainable and balanced growth.

The Indian MSME sector has been severely affected by COVID-19 pandemic. For instance, according to a study conducted by Indian Institute of Technology – Madras (IIT-M) in association with industry bodies on the impact of COVID on MSMEs in Tamil Nadu, the phases of lockdown announced by the government witnessed a revenue shortfall of more than 60 percent for the sector, creating an unprecedented crisis to the industry². The MSME sector is thus facing a severe shortage of working capital, including delay in payments, shortage of labour and disruption in supply chain.

In order to overcome this crisis, the government has announced many lucrative schemes for MSMEs and nationalised banks have launched credit guarantee schemes to start-ups as well as existing businesses of MSMEs without collateral security.

WHAT ARE MICRO, SMALL AND MEDIUM ENTERPRISES?

The definition of Micro, Small and Medium enterprises in terms of the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006 is as under:

² <https://economictimes.indiatimes.com/small-biz/sme-sector/iit-m-industry-bodies-to-study-covid-19-impact-on-msmes/articleshow/75738629.cms?from=mdr>

Earlier MSMEs Classification			
Criteria: Investment in Plant & Machinery or Equipment			
Classification	Micro	Small	Medium
Manufacturing Enterprises	Investment < Rs. 25 lakhs.	Investment > Rs. 25 lakhs to < Rs. 5 crores	Investment > Rs. 5 crores to < Rs. 10 crores
Service Enterprises	Investment < Rs. 10 lakhs.	Investment > Rs. 10 lakhs to < Rs. 2 crores	Investment > Rs. 2 crores to < Rs. 5 crores

Source: Notification by Ministry of Small-Scale Industries dated 5th October, 2006.

Revised MSMEs Classification with effect from 1 st July, 2020			
Composite Criteria: Investment and Annual Turnover			
Classification	Micro	Small	Medium
Manufacturing & Services	Investment < Rs. 1 crore and Turnover < Rs. 5 crores	Investment < Rs. 10 crores and Turnover < Rs. 50 crores	Investment < Rs. 50 crores and Turnover < Rs. 250 crores

Source Notification by Ministry of Micro, Small and Medium Enterprises dated 1st June, 2020.

Main objectives of revision of classification of MSMEs

- Facilitation and credit flow to MSMEs
- Improving competitiveness of MSMEs
- Improve manufacturing base through upgradation of technology
- Promotion of MSMEs through cluster bases approach
- Marketing support to MSMEs
- Skill development and entrepreneurship development training

MSMEs CONTRIBUTION TO INDIAN ECONOMY

MSMEs play a vital role in various areas of the defence sector such as R&D, Maintenance Repair and Operating Supply, naval and land system, sub system and accessories, software development, casting, forging, metal wires etc. They are providing immediate largescale employment with lower investment and occupy a position of prominence in Indian economy and are the second largest manpower employer after agriculture. By providing resilience to ward off global economic shocks and adversities, the Indian MSME sector is the backbone of the national economic structure and has unremittingly acted as the bulwark for the Indian economy.

With around 83.7 million units throughout the geographical expanse of the country, according to National Statistical Office, the share of MSME sector in the country's total GDP during

2018-19 has been 30.3%, overall exports from India have been 48%³. The MSME sector presently provides employment to around 120 million persons.

The salient features of MSMEs:

- Creation of employment opportunities and more equitable income distribution;
- Utilizing indigenous resources;
- Contribution in rural industrialization and economy;
- Improving of foreign exchange resources;
- Creation of backward and forward linkages with existing industries;
- Encouraging Entrepreneurial spirit.

This sector consistently maintains a growth rate of over 10%. About 20% of the MSMEs are based out of rural areas, which indicates the deployment of significant rural workforce in the MSME sector and is an indicator of the importance of these enterprises in promoting sustainable and inclusive development as well as generating large scale employment, especially in the rural areas.

Registration of MSMEs

If any Micro, Small or Medium Enterprises want to start any business, they need to do the registration with MSMEs Udyog Aadhar. This facility provides the business with a lot of benefits and subsidies.

PRE-COVID SCENARIO OF MSMEs IN INDIA

India's MSME sector is self-assured for a mega transformation in 2020, following the launch of an Alibaba like e-market place, trendy yet affordable Khadi products to appeal to the master and digital data-based credit ratings to help entrepreneurs avail loans. Timely availability of low-cost credit remains a challenge. India has more than 50 million small and medium enterprises which face the problem of liquidity crunch.

MSME SAMBANDH

The MSME Sambandh is the Public Procurement Portal launched by Central Government for the MSMEs. The main objective to launch this portal is to monitor the implementation of the Public Procurement from MSEs by Central Public Sector Enterprises.

The Ministry of MSMEs came out with the Public Procurement Policy for Micro and Small Enterprises (MSE) Order, 2012 on 26th March 2012 which has mandated that every Central Ministry/Department/PSU shall set an annual goal for procurement from the MSE sector at the beginning of the year to the extent of mandated minimum total annual purchases from the products produced or services rendered by MSEs.

The Ministry also made amendment in the Public Procurement Policy for the Micro and Small Enterprises (MSEs) Order, 2012 on 9th November, 2018 making a special provision for Micro

³ http://www.dcmsme.gov.in/uam_publication_2015-2018.pdf

and Small Enterprise owned by women. Out of the total annual procurement from Micro and Small Enterprises, 3% from within the 25% target shall be earmarked for procurement from Micro and Small Enterprises owned by women.

Procurement by Central Ministries / Departments / CPSEs as on 29th June, 2020

- Total Procurement by 126 CPSEs = Rs. 1,25,310.10 crores.

Sr. No	Particulars	Value of Procurement in Rs. (Crores)	No. of MSEs Benefited
1.	Procurement from MSEs (Including SC/ST owned)	37, 546.87	152954
2.	Procurement from SC/ST owned MSEs	652.19	5998
3.	Procurement from Women owned MSEs	381.20	3385

Compiled by the authors based on Literature review (Source: https://sambandh.msme.gov.in/PPP_Index.aspx)

The government has also approached multilateral banks like ADB, World Bank and KfW to provide low cost funds for the sector. It has also declared plans to launch digital data-based credit ratings of MSMEs to help entrepreneurs secure bank loans on the basis of these credit ratings.

“ The Ministry of MSMEs came out with the Public Procurement Policy for Micro and Small Enterprises (MSE) Order, 2012 on 26th March 2012 which has mandated that every Central Ministry/ Department/PSU shall set an annual goal for procurement from the MSE sector at the beginning of the year to the extent of mandated minimum total annual purchases from the products or services produced or rendered by MSEs.

Entrepreneurship and Skill Development Programme (ESDP)

Entrepreneurship promotion and development programmes are being organized regularly to nurture the talent of youth by enlisting them on various aspects of Industrial/Business activity required for setting up MSMEs. The following activities are conducted under the ESDP Scheme⁴,

1. Industrial Motivational Campaign (IMC) – Two days
2. Entrepreneurship Awareness Programme (EAP) – Two Weeks
3. Entrepreneurship - cum-Skill Development Programme (E-SDP) – Six Weeks

⁴ <https://msmedi.dcmsme.gov.in/>

4. Management Development Programme (MDP) – One Week

RECENT REFORMS AFTER NOVEL COVID-19 PANDEMIC IN INDIA

Banks are now expected to become more comfortable in assisting this category of borrowers because the rise in zero loans are guaranteed by the Central government. A partial credit guarantee scheme has been extended to enable promoters of 45 lakh MSMEs to increase their equity. A total of Rs. 20,000 Crores will be funded through credit guarantee fund trust for Micro and Small Enterprises (CGTMSE) whereby banks will lend money to promoters to infuse as equity in their business.

MSMEs loan Interest rates (as on 29th June, 2020) with respect to some of the banks

Bank Name	Interest Rate	Highlight
HDFC Bank	15.65 %	An unsecured MSMEs loan that allows a borrower to borrow funds without keeping any asset or mortgage as collateral. So no time is wasted upon collateral verification and documentation. Further, the loan can be availed through online portals of various banks.
ICICI Bank	16.49 %	
State Bank of India	11.20 %	
Punjab National Bank	12.65 %	
Indian Overseas Bank	14.90 %	
Bank of Baroda	14.10 %	
IDBI Bank	12.25 %	
IndusInd Bank	14.00 %	

Compiled by the authors based on Literature review (Source: <https://www.myloancare.in/msme-loan/>)

ATMA NIRBHAR BHARAT ABHIYAAN

As a part of Atma Nirbhar Bharat Abhiyaan for standard MSMEs, collateral-free automatic loans worth Rs. 3 Lakh Crores will be rolled out. This package will be available till 31st October, 2020. This financial stimulus package is expected to benefit 45 lakh units to resume their business operations and safeguard their employees from losing jobs⁵.

MSMEs can avail loans from banks to sustain their operations over a period of time along with paying a certain percentage as interest to the banks. For the sustenance of MSMEs in the country a subordinate debt is being given, worth Rs.20,000 Crores.

Along with this, the finance minister also announced that there will be a new fund for MSMEs which will include a substantial equity infusion of Rs. 50,000 Crores through MSMEs' Fund of Funds. In addition to that the Finance minister mentioned that Global tender is not to be allowed up to Rs. 200 crores. This will be a step towards supporting 'Make in India' and self-reliant India. Further, E-market linkage for MSMEs will be promoted to act as a replacement for trade fairs and exhibitions.

At the behest of Hon'ble Minister of Micro, Small and Medium Enterprises, on 19th March, 2020, a proposal has been sent to the Finance Ministry suggesting measures for providing

⁴ <https://msmedi.dcmsme.gov.in/>



relief to Micro, Small and Medium Industries from the impact of COVID-19. On 12th April, 2020, the Finance Minister stated that the MSME sector will tide over huge blow caused by the lockdown and reduce its dependence on imports from China in particular by ramping up domestic manufacturing with the government support. On 7th May, 2020, the Hon'ble Minister urged major industries to release the outstanding dues to companies in the MSME sector within a month to save them from collapse in the wake of the pandemic.

CREATION AND HARMONIOUS APPLICATION OF MODERN PROCESSES FOR INCREASING THE OUTPUT AND NATIONAL STRENGTH

A new technology platform to empower MSMEs was launched by the Hon'ble Prime Minister on 1st June, 2020. The new web portal is called *Creation And Harmonious Application Of Modern Processes For Increasing The Output And National Strength*⁶ (CHAMPIONS), which is a tech-driven control room-cum-management information system. From the name it can be understood that it will aim at Creation and Harmonious Application of Modern Processes for Increasing the Output and National Strength. Accordingly, the name of the system is CHAMPIONS. This is basically for making the smaller units big by helping and handholding.

Three basic objectives of the CHAMPIONS are:

- Help the MSMEs in this difficult situation in terms of finance, raw materials, labour, permissions, etc.
- Help the MSMEs capture new opportunities including manufacturing of medical items & accessories.

⁶ https://champions.gov.in/MyMsme/grievance/COM_Grievance_Welcome.aspx

- Identify the sparks, i.e., the bright MSMEs which can become national and international champions.

PROPOSALS IN THE AMENDMENTS OF LLP ACT

Major relief is expected for small and medium businesses in India as the government proposes to decriminalize the compoundable offences under the Limited Liability Partnership Act, 2008. In India, more than 1.45 lakhs LLPs are registered under the LLP Act and majority of them are small and medium enterprises⁷.

Further, the government plans to decriminalize compoundable offences involving minor, procedural or technical violations or offences which may not involve any harm to public interest. The offences proposed to be decriminalized include non-compliance with norms regarding:

- Eligibility and appointment of designated partners;
- Registration of changes in partners;
- Maintenance of books of account, other records and audit;
- Filing of annual return.

BENEFIT FOR MSMEs DUE TO RECENT REFORMS

All MSMEs with a turnover up to Rs. 100 Crores and with outstanding credit up to Rs. 25 Crores will be eligible to borrow up to 20% of their total outstanding credit as of 29th February, 2020. For these small enterprises hit by zero cash flow due to the national lockdown, this will act as initial seed money.

⁷ http://www.mca.gov.in/Ministry/pdf/Comments_19062020.pdf

This would help to buy raw materials, pay initial bills and daily wages to employees. Further, it is prescribed that these loans are not required to be backed by collaterals⁸.

CREDIT GUARANTEE SCHEME (CGTMSE)

One of the well-known problems of the Micro and Small Enterprises is availability of bank credit without the hassles of collaterals / third party guarantees. Resolving this problem would be a major source of support to the first-generation entrepreneurs to realise their dream of setting up their own Micro and Small Enterprise (MSE). Keeping this objective in view, Ministry of Micro, Small & Medium Enterprises (MSME), Government of India launched Credit Guarantee Scheme (CGS) so as to strengthen credit delivery system and facilitate flow of credit to the MSE sector.



As a first step to operationalise the scheme, Government of India and SIDBI set up the Credit Guarantee Fund Trust for Micro and Small Enterprises (CGTMSE).

CGTMSE has introduced a new “Hybrid Security” product allowing guarantee cover for the portion of credit facility not covered by collateral security.

The salient features of the Credit Guarantee Fund Trust for Micro And Small Enterprises (CGTMSE)⁹, briefly are as under:-

- Guarantee coverage is 85% (micro enterprises up to Rs. 5 lakh) and 75% for others.

- Extent of guarantee cover is 50% of sanctioned amount of credit from Rs. 10 Lakhs to Rs. 1 crore for retail trade activity.
- Extent of guarantee cover is 80% for micro and small enterprises operated by women and for those enterprises in Northeast region for credit facility up to Rs. 50 Lakh

About 2 lakhs stressed MSMEs with non-performing assets are projected to benefit from this. The CGTMSE will offer partial credit guarantee to banks.

“ All MSMEs with a turnover up to Rs. 100 Crores and with outstanding credit up to Rs. 25 Crores will be eligible to borrow up to 20% of their total outstanding credit as of 29th February, 2020. For these small enterprises hit by zero cash flow due to the national lockdown, this will act as initial seed money. This would help to buy raw materials, pay initial bills and daily wages to employees. Further, it is prescribed that these loans are not required to be backed by collaterals.

FUND OF FUNDS

As per the announcement made by the Hon'ble Finance Minister, the aim of the Fund of Funds (FoF) scheme is to infuse Rs. 50,000 Crores of equity into MSMEs. Government will provide Rs. 10,000 Crores as initial corpus of the fund through “fund of funds” system. This will be leveraged to raise Rs. 50,000 Crores which will be used to support MSMEs in desperate need of equity through “daughter funds” of the main fund of funds.

CONCLUSION

The Indian MSME sector has been particularly hit hard by the COVID-19 pandemic. Even before the pandemic the MSME sector had been under stress. The challenges are payments not coming on time as also lack of skillset and technology available being limited. After the pandemic has started, there is Zero revenue coming in for the last few months. The PSUs have started to clear all the payments in 45 days which come as a relief. Consequent to the awareness and the measures taken through MSMED Act and other mechanisms, the private sector has also recognized the need to pay MSMEs on time. Around 30 to 40% units have opened and work has begun as they had some unfinished orders to complete, which they were unable to do because of lockdown. The Hon'ble Union Minister of Micro, Small and Medium Enterprises while addressing a webinar on India's electric vehicle roadmap post COVID-19 said, “India needs to boost exports as investors shift their focus from China to India”. Hopefully, the things will be clear soon in some time to come, since as of now, only the loan part is operational.

Now, the only hope is to wait for the pandemic to end and then sincerely hope that the worst days are behind us. The Indian MSMEs definitely have a lot to look forward to as they pray for the beginning of the days when they can see gradually improving light coming as it would after the end of a long winding tunnel.

⁸ The Hindu 17th May 2020
⁹ https://www.cgtmse.in/About_us.aspx

"Procrastination is the Thief of Time" - In the context of Section 124(6) of The Companies Act, 2013

Under the provisions of Section 124(6) of the Companies Act, 2013, in addition to the dividends remaining unclaimed for a period of seven years, the shares in respect of which dividends are unpaid or unclaimed shall also be transferred to the Investor Protection & Education Fund. This article analyses the position with reference to decided cases and concludes that the shareholders should be alert and exercise their right to claim dividend in time to avoid transfer to IEPF.



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The saying "Procrastination is the thief of time" not only holds good for everyday life but is very much applicable when it comes to exercising the legal rights of parties. The Limitation Act, 1963 provides various scenarios under which a person seeking to exercise his legal rights is bound to do so within the specified time limit as mentioned therein. There are some statutes which prescribe a special Law of Limitation as regards the time period within which the party is bound to exercise his or her rights.

However, in a rather peculiar legal position as it stands today, shares held by a person in a company which have been best described as a property comprising of a bundle of rights¹, the non-exercising of one particular right amongst the said bundle by a shareholder for a certain period could result in the shareholder being divested of his title to the shares in question, which is a larger right. In essence if a shareholder does not claim his dividend within the time period specified, his shares along with his dividend gets transferred to the authority established by the Central Government.

The Companies Act, 2013 contains this unique provision under Section 124(6) wherein if the shareholder does not claim his dividend within a period of seven years from the date of its declaration, the dividend along with the shares in question

would also stand vested in an Authority created namely, the Investor Education Protection Fund.

LEGISLATIVE HISTORY

The Companies Act, 1956, which was amended by way of the Companies (Amendment) Act, 1974, introduced two Sections viz. 205A and 205B. The statement of objects and reasons for the said Sections in a nutshell, was to provide for the declaration of dividend and to transfer the dividend in accordance with the rules prescribed by the Central Government. Specifically, the Section made it obligatory for companies to transfer the total amount to be distributed as dividends to shareholders in any year to any Scheduled Bank within seven days from the date of declaration. The obvious reason being that the company ought not to declare dividend when liquid funds are not readily available. It was also thought necessary especially in cases where the dividend declared remained unclaimed or undistributed for several years. This led to a proposition that, such amount lying unpaid for a period of three years should be transferred by the company to the General Reserve Account of the Central Government.

The intention was that, the management ought not to misuse the money, which is due to the shareholders. When claims were preferred post the period of three years, the individual claimants could make such a claim to the Central Government and those claims were settled accordingly. Therefore, the legitimate intention at the threshold was to ensure that the shareholders received their dividends.

POSITION POST THE AMENDMENT IN THE YEAR 1999

The provision in relation to unclaimed dividend underwent a further drastic change wherein under sub clause (5) of Section 205A, the unclaimed dividend would have to be transferred to a fund called the Investor Education Protection Fund ("IEPF"), which was to be established under Section 205C. Further, the period within which the unclaimed dividend was to be transferred was extended to seven years. Apart from the unpaid dividend account of the company, various other amounts were to be credited to the IEPF, which were stated under sub clause (2) of Section 205C. The proviso and the explanation to Section 205C brought the drastic change for the first time wherein it was specifically stated that, all claims post the period of seven years, shall be barred and that no payment shall be made in respect of such claims.

¹ LIC v. Escorts Ltd., (1986) 1 SCC 264

*The views expressed are the personal views of the author

The Parliament in its wisdom thought it fit that the limitation period ought to be imposed in respect of claim towards the unclaimed dividend amount and that a shareholder, who has not claimed such dividend within seven years, ought not to be eligible for refund/claim post the period of seven years. The vires of the said Section 205C was challenged before the Hon'ble Delhi High Court in *Nivedita Sharma Vs The Industrial Credit and Investment Corporation of India and Ors. in W.P.(C) No.10157 of 2009* and the Hon'ble Delhi High Court by judgment dated 07-07-2011 dismissed the Challenge to Section 205-C and further held that the said section is a salutary and virtuous provision. One of the observations in the said judgment was that the said provision curtails the company from enriching itself when the depositors fail to stake claim and have not been paid for a period of seven years from the date it became due.

“ The intention was that, the management ought not to misuse the money, which is due to the shareholders. When claims were preferred post the period of three years, the individual claimants could make such a claim to the Central Government and those claims were settled accordingly. Therefore, the legitimate intention at the threshold was to ensure that the shareholders received their dividends.

The period of seven years was considered to be long enough for the depositors dealing with the company in making a claim before the company and that the said Section was held to be not in violation of Article 14 of the Constitution. The said Section was held to be a worthy and meritorious Legislation and in public interest. It was also mentioned that the Rules of limitation are founded on consideration of public policy and that when the cause of action has arisen and claim is not raised within the prescribed limitation period, the Act seeks to give quietus to claims, which have not been enforced during the prescribed period. Further, it ensures litigants are diligent in pursuing their claims and therefore they ought to be vigilant in enforcing their right before the expiry of the limitation period. The said judgment was challenged before the Hon'ble Supreme Court of India in *S.L.P.(C) No.19616 of 2011* and on 02-01-2012, the petition was dismissed as withdrawn with liberty to approach the appropriate forum once again. Following the said dismissal, once again a Writ Petition came to be filed in *W.P.(C)No.10908 of 2012 in Nivedita Sharma Vs The Ministry of Corporate Affairs and Ors* and this petition came to be dismissed on 20-04-2012.

Therefore, the vires of the said provision was upheld under the Companies Act, 1956 although the intent and purpose of 1974 (Amendment) Act had been given a go-by in the 1999 (Amendment) Act.

POSITION UNDER THE COMPANIES ACT, 2013

One of the guiding principles for reviewing the provisions of Companies Act, 1956, was to encourage the setting up of businesses and simultaneously to protect the interests of the shareholders/investors including the small investors.



It is interesting to note that, pursuant to the J. J. Irani Committee Report, the Companies Bill 2009 was introduced in the Lok Sabha on 03-08-2009. The said Bill was referred to the Parliamentary Standing Committee on Finance and the Committee gave its Report on 31-08-2010. The recommendations/suggestions received from various stake holders were considered and the 2009 Bill was withdrawn and the 2011 Bill was introduced. The 2009 Bill itself provided for the investors to make a claim post the period of seven years before the IEPF Authority. This was in consonance with the principles that investor-friendly measures ought to be taken and protection of their interest was of paramount importance. This resulted in also including the funds, which were transferred to IEPF under the Companies Act, 1956, being refunded if claimed under the proposed Act.

Clause 112(3) of the Companies Bill 2009 provided that the Fund shall be utilized towards refund of unclaimed dividends as well and Clause 113 specifically provides that the amount lying in the previous fund under section 205C of the Companies Act, 1956, was to become part of the Fund under the new Act.

It was under the Companies Bill 2011 that the new provisions which were absent in 2009 Bill were sought to be introduced. One of the major changes being that unclaimed dividend for a period of seven years would result in the transfer of shares along with unpaid dividend amounts to IEPF. The Parliamentary Standing Committee, which scrutinized the said Bill remarked that, since dividend for the relevant security remained unclaimed for seven years or more, the underlying securities are in the position of being misused by vested parties and, therefore, are to be transferred to IEPF. At Page 87 of the said report dated 26-06-2012, the Ministry had commented that the provision for seeking transfer of security may be retained, as it seeks to achieve the broader objective of security in the capital market, since unclaimed security would be misused by unscrupulous persons for money laundering activities.

However, it failed to explain any further nor was there any discussion as to how shares which are anyway required to be in demat form before transfer to IEPF Authority could be misused especially for money laundering activities.

This finally resulted in the Companies Act, 2013 containing the provision of Section 124 (Unpaid Dividend Account) and Section 125 (IEPF). The said Sections came into force on 07-09-2016. Section 124 is analogous to Section 205A of the Companies Act, 1956 and the controversy and the object of the said Article is contained in Section 124(6) of the Companies Act. It states that all shares in respect of which dividends have not been paid or claimed for seven consecutive years or more, shall be transferred by the company in the name of the Investor Education and Protection Fund along with the statement containing the details as may be prescribed. The proviso to Section 124(6) gives an option to the shareholders to reclaim the shares by following the arduous and onerous procedure prescribed in the IEPF Rules.

Curiously, the march of law in this regard has sometimes travelled forward, sometimes backward and sometimes even sideways as can be seen above. The provision can at best be described as a conservative measure which encroaches upon the rights of shareholders and also raises a question as to whether the said provision is in violation of Article 14 (Equality) and Article 300A (Right to property) of the Constitution of India. Section 124(6) is extracted herein below:

(6) All shares in respect of which unpaid or unclaimed dividend has been transferred under sub-section (5) shall also be transferred by the company in the name of Investor Education and Protection Fund along with a statement containing such details as may be prescribed:

Provided that any claimant of shares transferred above shall be entitled to claim the transfer of shares from Investor Education and Protection Fund in accordance with such procedure and on submission of such documents as may be prescribed.

The Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 ("IEPF Rules") specifically underwent many amendments in respect of procedure to be adopted for reclaiming the shares. The lacuna as it exists today is that, unlike never before in the history of this legislation, the shares have also been provided to be compulsorily transferred to the IEPF Authority. This results in encroachment/infringement of the rights of the shareholders. This is so because, the causation for the transfer to the IEPF Authority is stated to be the non-claiming of dividend whereas the result is that the shares which are a bundle of rights are taken away in toto due to the fact that only one particular right amidst the said bundle was not exercised.

On the contrary from the company's perspective it is interesting to note that some companies are not compulsorily required to keep their shares in demat format, however since the rules require the companies to transfer the shares in demat form, the companies have to incur additional expenditure for the compulsory conversion of physical shares to demat. Therefore, once again the anomaly that exists is that on one hand the companies which were exempt from keeping their shares in demat form are now indirectly required to demat the shares for the so-called default of the shareholders.

The transfer of shares to the Central Government Authority is in violation of the well-established principles of law despite the fact the IEPF Rules provides for a procedure to reclaim the shares. The vires of the provision was challenged in WP No. 1538/2020² before the Hon'ble Madras High Court on the ground that although a procedure has been provided under the IEPF Rules for reclaiming the shares, there is no rationale to divest the title from its lawful owner. Moreover, the vires was also challenged on the grounds that the procedure which has been laid down to reclaim the shares is not merely onerous but also capricious and lacks application of mind by providing for compulsory transfer of shares to the IEPF Authority. The other ground of challenge involved was that a provision of this nature is arbitrary and hence in violation of not just Article 300A but also Article 14 of the Constitution of India. The transfer of shares for the reason of dividend not being claimed was argued to be in violation of substantial due process and the pillars of such a process namely reason, reasonableness, fairness which every enactment ought to follow were also flouted.

“ The Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 ("IEPF rules") specifically underwent many amendments in respect of procedure to be adopted for reclaiming the shares. The lacuna as it exists today is that, unlike never before in the history of this legislation, the shares have also been provided to be compulsorily transferred to the IEPF Authority. This results in encroachment/infringement of the rights of the shareholders.

It was further argued that despite the fact that right to property is no longer a fundamental right, it is nonetheless a constitutional right which cannot be interfered with without satisfying the twin test of compensation and public purpose. The provision and the corresponding rules are manifestly arbitrary and unreasonable for the fact that there is no apparent public purpose for transferring the shares along with the dividend to the IEPF authority. Shares and the ownership thereto being a bundle of rights, there is animus to deal with the property in the shares and the same cannot be taken away only on the ground that one of the rights attached to the property is not exercised.

Therefore, broadly the challenge to section 124(6) and rules 6 and 7 of the IEPF rules were based on the grounds as discussed hereinabove. The Hon'ble High Court after having considered the submissions made on behalf of the Writ Petitioners and also the case laws which were cited, had come to a conclusion that Section 124(6) along with the corresponding rules cannot be held to be violative of the Constitution of India on the ground that there is no deprivation of property as there is no statutory vesting of shares with the IEPF and it does not confer ownership of title to the IEPF. It relied on the proviso to 124(6) which provided for reclaiming of shares. On this basis it was concluded that there is no vesting. Similarly, the rules which provides for procedure for reclaiming were held to be in order. It further extracted the Hon'ble Delhi High Court's decision in

² Kamala Srinivasan vs Union India and ors. - 2020 SCC Online Mad 1089

India Awake for Transparency VS Union of India and others in WP(C) 10589/2017 which also held that 124(6) does not result in statutory vesting and it merely transfers through transmissions of shares in companies which have unclaimed dividends. The High Court further held that even if it is assumed that there is deprivation, such deprivation was in accordance in law as a result of the law made by the Parliament and not based on an executive act. On the point of rules being onerous and in violation of Article 14 of Constitution of India, it was held that just because the rules are cumbersome, the same cannot be made a reason to argue that the rules are in violation of Article 14. Interestingly it was also observed that the intention behind 124(6) which deals with transfer of shares was to ensure that the Companies do not profit out of the unclaimed dividends. Further it held that the rules have been brought out to ensure that only the claims of genuine persons can be entertained and the fact that the procedure is expensive or onerous with this background does not make it fall foul of Article 14 of the Constitution.

The following aspects emerge as a result of the said decision. The challenge to the provision and its corresponding rules in essence was in line with *K.T. Plantation (P) Ltd. v. State of Karnataka*³. No doubt a person cannot be deprived of his property save by authority of law but the expression 'Property' was held not to be confined to land alone but also intangibles. The essence of the said Article 300A rests on the twin test of compensation and public purpose which were inseparable concomitants for the power of eminent domain. The High Court in dealing with this argument has held that there is no statutory vesting of shares on the strength of two factors namely:

- (1) The proviso provides for reclaiming of shares and hence there cannot be any statutory vesting of title
- (2) The rules provide for the procedure for refund.

The inspiration has been drawn for such a conclusion based on the decision of *India Awake for Transparency Vs Union of India and others*. However, it is pertinent to state that even in the said judgment, it was held that there is no statutory vesting because there was transfer through transmission. The anomaly in this situation is that a transfer of a property involves the divesting of title and transmission of shares could only happen by operation of law (on the death of the shareholders). So, the minute the expression transfer or transmission is used it results in the name of the member⁴ being removed from the Register of Members⁵ and the name of the IEPF authority is entered. The very definition of the member in Companies Act, 2013 is that a member is such a person whose name is entered in the register of members. Therefore, it leads to the inescapable conclusion that the transfer of the shares to the IEPF authority and removal of name of the owner of shares and replacement of his name with the name of the IEPF Authority would only mean that it is deprivation of property. To the contra argument that the deprivation is in accordance with law made by the Parliament, it is for this reason that the said provision and the corresponding rules make it fall foul of Article 14 of the Constitution of India. This is so because, when there is no intelligible differentia for the transfer of shares based on the fact that the right to claim dividends is given primacy over other rights in relation to the shares, the said provision hence

needs to be struck down on this very ground.⁶ The shareholder could be exercising his voting rights but may not have claimed his dividend, so the question as to whether non-claiming of dividend alone be a ground for depriving the shareholder of right his to the shares (property) crops up.

Further the rules in support of the said provision make it not just onerous but the mischief which has been propounded under Section 124(6) is furthered by the said Rules. Therefore, the legislation is capricious, irrational and disproportional. These ingredients make the provision manifestly arbitrary as has been in held in *Indian Express Bombay (P) Ltd Vs Union of India*⁷ and *State of AP Vs Mcdowell and Co.*⁸



The earlier challenges to the corresponding provisions under the Companies Act, 1956 were negated only on the ground that the transfer of dividend to the authority was a salutary and a virtuous provision. The rationale behind such a statement by the Hon'ble High Court of Delhi⁹ is that the companies may misuse the unclaimed dividends which has not been claimed for a period of 7 years and the section in question namely 205 (C) was only in relation to dividend and not in relation to shares. Thus, it was laid down that if at all an aggrieved shareholder makes a claim, he should do so within a period of 7 years and that the period of 7 years is a substantially long time. With the advent of the Companies Act, 2013 and the insertion of Section 124(6), the same analogy ought not to be applied to the present situation as it involves the transfer of shares also.

Therefore, the law as it stands today requires the shareholder to be alert and alive in exercising his right to claim dividend if he does not want his shares to be transferred to the IEPF Authority. Such reclaiming of shares will not just include a time consuming and an onerous process but can also be expensive because most of the cases today in relation to reclaiming unpaid dividends are in relation to persons who are since deceased and their legal heirs are not aware of such properties/shares. Therefore, it also involves the State law as regards stamp duty that is payable for getting the necessary documents (for refund) and the litigation process that could be involved for e.g. obtaining a succession certificate or a letter of administration. These documents have been made compulsory for the legal heirs for reclaiming their shares. Hence the challenge to the lawful owners of the shares is to be aware of these provisions and also keep their legal heirs informed about the said provisions so that this cumbersome mechanism of re-owning or reclaiming what is rightfully and legally yours can be avoided.

⁶ *ShayiraBanuvs Union of India 2017 9 SCC 1*

⁷ *1985 1 SCC 641*

⁸ *1996 3 SCC 709*

⁹ *Nivedita Sharma Vs The Industrial Credit and Investment Corporation of India and Ors. in W.P.(C) No.10157 of 2009*

³ *(2011) 9 SCC 1*

⁴ *Section 2(55) of the Companies Act, 2013*

⁵ *Section 88 of the Companies Act, 2013*

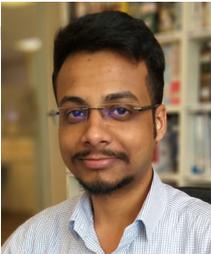
Reimagining Annual General Meetings – Virtually

Annual General Meetings (“AGMs”) have always been held in the physical presence of shareholders at the venue of the meeting. Even as the existing laws did not provide an option to companies to hold their AGMs through Video Conferencing or Other Audio-Visual Means, in 2019, one-way live webcast of AGMs was made mandatory for certain category of listed entities. However, the present scenario has forcibly imposed a change in the manner in which AGMs are held and this article attempts to highlight the procedure for holding a Virtual AGM.



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ANNUAL GENERAL MEETINGS – THE TRADITIONAL WAY

The provisions relating to calling and convening an Annual General Meeting (“AGM”) in the physical presence of shareholders at the venue of the meeting are provided in Section 96 under Chapter VII of the Companies Act, 2013 (“the Act”) read with the Companies (Management and Administration) Rules, 2014, as amended. The provisions inter-alia state that an Annual General Meeting shall be called during business hours, that is, between 9:00 a.m. and 6:00 p.m. on any day that is not a National Holiday and shall be held

either at the Registered Office of the company or at some other place within the city, town or village in which the Registered Office of the company is situated. It further states that the Central Government may exempt any company from the said provisions subject to such conditions as it may impose. Certain class of companies have also been mandated under the Act to provide to its shareholders the facility to exercise their voting right on resolutions proposed to be considered at a General meeting by electronic means. Detailed procedure to be followed by a company which provides the facility to its shareholders to exercise voting by electronic means has been prescribed under the rules, as aforesaid.

Provisions relating to other activities connected with an Annual General Meeting viz. dispatch of Notice to shareholders, appointment of proxies by shareholders, voting at the meeting, representation of Corporations at the meeting etc., are also provided under Chapter VII of the Act read with the rules made thereunder.

PRESENT SCENARIO

Extraordinary times demand extraordinary responses. The unprecedented times prevailing in the world due to the pandemic caused by COVID-19, have compelled each one of us to change, alter, adapt, face, confront the fast-emerging situations with flexibility and flair. Government has also swung into action imposing restriction like lockdown of activities as well as provided certain relaxations. In matters of compliance, regulators too have been compelled to choose a middle path to initiate several measures easing the rigour and substance of strict compliance with the statutory requirements even while sticking to the apparent adherence to their form. This includes regulators granting dispensation from compliance with certain requirements as well as relaxations / extension of time.

INITIATIVES BY THE MINISTRY OF CORPORATE AFFAIRS

One such measure made by the Ministry of Corporate Affairs (“MCA”) vide General Circulars issued on 08th April, 2020, 13th April, 2020 and 05th May, 2020 was to permit companies to hold their Extraordinary and / or Annual General Meetings through Video Conferencing (“VC”) or Other Audio-Visual Means (“OAVM”). The Act did permit companies to hold meetings of the Board of Directors and Committees through Video Conferencing; however, did not contain any provision for holding General Meetings through VC or OAVM (“Virtual Meetings”). Considering that General Meetings involve large

Reimagining Annual General Meetings – Virtually

gathering of people which is now subject to strict restrictions and is not desirable during these times, holding Virtual meetings was perhaps felt as the only means to avoid committing default of the provisions of the law relating to holding General Meetings.

The initial General Circulars issued by MCA on 08th April, 2020 and 13th April, 2020 requested companies to take all decisions of urgent nature requiring approval of shareholders, other than items of ordinary business or business where any person has a right to be heard, through the mechanism of postal ballot / e-voting in accordance with the provisions of the Act and rules made thereunder, without holding a General meeting, which requires physical presence of shareholders at a common venue. Later on, in view of continuing restrictions on the movement of persons at several places in the country, MCA vide General Circular issued on 05th May, 2020, allowed companies to conduct their AGMs through VC or OAVM, subject to fulfilment of the requirements stated in the said General Circulars.

“ Extraordinary times demand extraordinary responses. The unprecedented times prevailing in the world due to the pandemic caused by COVID-19, have compelled each one of us to change, alter, adapt, face, confront the fast-emerging situations with flexibility and flair.

It is interesting in this context to note that the Securities and Exchange Board of India made it obligatory for certain category of listed entities effective 01st April, 2019, to provide one-way live webcast of the proceedings of their AGMs held “physically” with a facility for shareholders who logged in to lodge their queries/clarifications during the AGM for responses by the Chairperson of the meeting which was received well by both Indian and foreign shareholders. The Virtual AGMs through video-conferencing now in vogue though however are in a different category with no physical interaction at all. This relaxation in terms of the texture of the AGMs has been necessitated owing to the continuation of lockdown across the country with varying restrictions on travel, movements across cities, assembly of people etc. However, Virtual AGMs allows shareholders to not only view but also effectively participate in the them.

Going digital has been the central theme of our government and capital markets in the last two decades with the introduction of screen-based trading, depositories, online dispatch of annual reports, e-voting at various points of time. The Regulatory insistence on trading through dematerialised shares has ensured more than 90% of shares of listed companies in demat mode, paving the way for integration of stock-exchanges, depositories and banking to facilitate transactions in a seamless manner. Now perhaps it is time for corporates to take another step by holding Virtual AGMs.

FRAMEWORK FOR VIRTUAL AGMs

MCA vide General Circulars stated aforesaid provided a detailed framework to be followed by companies for holding



Annual / Extraordinary General Meetings through VC or OAVM. The framework is in two parts, first part being for companies which are required to provide the facility of e-voting under the Act, or any other company which has opted for such facility and second part being for companies which are not required to provide the facility of e-voting under the Act. Key points of the framework (first part) are as under:

- VC or OAVM to allow two-way teleconferencing;
- Notice of the meeting, Financial Statements (including Board's Report, Auditor's Report or other documents required to be attached therewith) is to be sent only through email and should be uploaded on the website of the company;
- Notice of meeting shall make disclosures with regard to manner in which framework provided in the said General Circulars shall be available for use by shareholders and also contain clear instructions on how to access and participate in the meeting;
- Before sending notices and copies of Financial Statements etc., a public notice by way of advertisement is to be published at least once in a vernacular newspaper in the principal vernacular language of the district in which the Registered Office of the company is situated and having a wide circulation in that district and at least once in English language in an English newspaper having a wide circulation in that district, preferably both newspapers having electronic editions, and specifying in the advertisement the following information, as provided under the said General Circulars:
 - Statement that the AGM will be conducted through VC or OAVM in compliance with applicable provisions of the Act read with the said General Circulars;
 - The Date and time of the AGM through VC or OAVM;
 - Availability of Notice of the meeting on the website of the company and the Stock Exchange, in case of a listed company;
 - The manner in which the shareholders who are holding shares in physical form or who have not registered their email addresses with the company can cast their vote through remote e-voting or through e-voting system during the meeting;

- The manner in which the persons who have not registered their email addresses with the company can get the same registered with the company;
- The manner in which the shareholders can give their mandate for receiving dividends directly in their bank accounts through Electronic Clearing Service or any other means;
- Any other detail considered necessary by the company.
- The company should provide a helpline number through the Registrar and Share Transfer Agent, technology provider or otherwise for the shareholders who need assistance with using the technology before or during the meeting;
- Recorded transcript of the meeting is to be maintained in safe custody by the company and in case of a public company, the same is to be uploaded on the website of the company;
- Participants to be allowed to pose questions concurrently or given time to submit questions in advance on the email address of the company;
- VC or OAVM facility to allow at least 1,000 shareholders or shareholders equal to the total number of shareholders of the company (whichever is lower) to participate in the meeting on a first-come-first-served basis. Large shareholders (i.e. shareholders holding 2% or more shareholding), promoters, Institutional investors, Directors, Key Managerial Personnel, Chairpersons of Audit Committee, Nomination and Remuneration Committee and Stakeholders Relationship Committee, Auditors etc., may be allowed to attend the meeting without restriction on account of first-come-first-served principle;
- At least one Independent Director and the Auditor or his authorized representative, who is qualified to be the Auditor shall attend the meeting through VC or OAVM;
- Chairperson of the meeting to satisfy himself and cause to record the same before considering the business in the meeting that all efforts feasible under the circumstances have indeed been made by the company to enable shareholders to participate and vote on the items being considered in the meeting;
- Proxies are not allowed to be appointed for meetings through VC or OAVM. Representatives of shareholders can be appointed as per Section 112 and 113 of the Act;
- All resolutions passed in accordance with this mechanism shall be filed with Registrar of companies within 60 days of the meeting clearly indicating therein that the mechanism provided in the said General Circulars along with other provisions of the Act and rules were duly complied with during such meeting;
- The company should ensure that all other compliances associated with the provisions relating to General Meetings viz. making of disclosures, inspection of related

documents / registers by shareholders, authorizations for voting by Bodies Corporate etc., as provided in the Act and the Articles of Association of the company are made through electronic mode.

PROCEDURE IN BRIEF

- Convene a meeting of the Board of Directors to *inter-alia* finalise holding of Virtual AGM, approve its Notice, appoint technology provider, appoint electronic voting service provider, appoint Scrutiniser for the Virtual AGM;
- Make necessary disclosures to Stock Exchanges and on the website of the company;
- Enter into necessary arrangements with service providers for the Virtual AGM as aforesaid;
- Dispatch of Annual Reports and Notice of Virtual AGM through emails – Notice to contain the additional details as required under General Circulars issued by MCA as aforesaid;
- Publishing necessary advertisements in newspapers as required under the Act and General Circulars issued by MCA as aforesaid;
- Uploading necessary documents and information on the website of the company;
- Convening the Virtual AGM and recording the transcript;
- Making necessary post-AGM disclosures and filings including filing all resolutions passed at the Virtual AGM with the Registrar of Companies.

“ All resolutions passed in accordance with this mechanism shall be filed with Registrar of companies within 60 days of the meeting clearly indicating therein that the mechanism provided in the said General Circulars along with other provisions of the Act and rules were duly complied with during such meeting

PRACTICAL GUIDANCE

As Virtual AGMs are here to stay for this year at least, the Secretarial Department of the company has an additional role to perform this year. They will have to co-ordinate with the agency which provides the VC / OAVM facility (technology provider), the Directors, other stakeholders like the Auditors, Scrutinisers etc., on a real time basis and conduct as many dry runs as possible to test the efficiency and efficacy of the system. They will have to collate questions / queries on the business to be transacted at the Meeting from the shareholders as well as speakers who registered to speak at the Virtual AGM at least two days before the Meeting. It is advisable to test the connectivity bandwidth of the shareholders who have registered as speakers so that last minute glitches don't mar the Meeting. In the light of the new format, need for an anchor or moderator is being felt to co-ordinate with the Chairperson



and the shareholder during the AGM. Some key points to be kept in mind:

- Prepare a detailed checklist including timeline for all activities involved including Minute-to-Minute schedule of the Virtual AGM;
- The Chairperson, Directors and other dignitaries on the “virtual dais” should be adequately briefed in advance on the procedure being followed for conducting the Virtual AGM;
- Special User IDs may be created for the aforesaid persons as well as Auditors, Scrutinisers etc.;
- Deemed place of the meeting will be the Registered Office of the company;
- Dry run to test the efficiency and efficacy of the system and identify possible gaps / issues that may come up;
- Connect with speaker shareholders in advance and brief them individually on the process being followed;
- Inspection of documents / registers electronically should ideally be provided to shareholders in “view only” mode to prevent unauthorised storage. In case registers have been maintained in physical form, the same should be legibly scanned and stored electronically well in advance;
- Prepare a list of “Do’s and Don’ts” for shareholders attending the Virtual AGM to ensure smooth conduct during the meeting;
- Plan well and prepare for the unexpected as conducting Virtual AGM is akin to stepping into the unknown.

FINER POINTS

As this is the first time that Annual / Extraordinary General Meetings are being conducted virtually i.e. through Video Conferencing or Other Audio-Visual Means, it calls for playing by the ear. Companies should observe and adapt the best practices being followed by other companies which have, as on date, already conducted Virtual AGMs in accordance with the prescribed framework, as aforesaid. This could include the manner in which the Virtual AGMs were conducted, the in-depth preparations made by the companies as well as the agencies involved, the finer points while conducting the meeting such as communication by the Chairperson to shareholders at the start of the meeting on the process being followed (for e.g. usage of teleprompter instead of reading from the pages as one needs

to look down and not on the screen), the options available to shareholders at the Virtual AGM, and so on.

ISSUES FOR CONSIDERATION

As seen aforesaid, companies covered under the first part of the General Circulars, as stated aforesaid, have been mandated to publish, before sending notices and copies of Financial Statements etc., a public notice specifying therein the information as prescribed in the said Circulars. Such companies are also required to publish, immediately on completion of dispatch of notices, another public notice specifying therein the information as prescribed under the rules. It is interesting to note that, both these public notices, i.e. before and after dispatch of notices contain similar facets of information and details.

Companies which are covered under the first part of the General Circulars, as stated aforesaid, will also be required to provide the facility of e-voting under the Act i.e. remote e-voting (prior to the AGM) and e-voting at the AGM. In case of a Virtual AGM, for all practical purposes, voting will be only through remote e-voting as no AGM with physical presence of shareholders at a common venue will be held. Considering this, it would have been easier to simply extend the remote e-voting period to continue till the conclusion of the AGM instead of the present requirement of closing the remote e-voting a day prior to the AGM. An enabling provision towards this is also provided under the rules.

CONCLUSION

Virtual AGMs enable pan India shareholder participation in the AGMs of the companies where they stay invested. This by itself is a big departure from those held so far and is shot in the arm for corporate democracy. Many of them will for the first time be able to appreciate the good work, pose questions, give suggestions etc., at the AGM which otherwise was not possible. Perhaps, if Virtual AGMs takes roots, MCA may need to amend the Act to provide an option to companies to hold Virtual AGMs which will facilitate wider participation of shareholders. 

REFERENCES:

1. General Circular No. 14/2020 issued by MCA on 08th April, 2020
2. General Circular No. 17/2020 issued by MCA on 13th April, 2020
3. General Circular No. 20/2020 issued by MCA on 05th May, 2020

Need for introducing a settlement scheme under the Competition Act

Significant amounts of penalty are pending recovery by the Competition Commission of India (CCI), as the aggrieved parties have taken recourse to appeal and the outcome of these long-drawn litigations is yet to be determined. Settlement Schemes now introduced for Companies and LLP's in the wake of COVID-19 are not only expected to give relief to the stakeholders, but also improve compliances. There are also settlement schemes under the Direct Tax Laws and SEBI has also put in place a settlement mechanism. This article highlights the need to introduce a settlement scheme under the Competition Act given that the Competition Amendment Bill is yet to be passed.



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The Competition Commission of India (CCI or the Commission), the antitrust regulator in India, has by now completed about 11 years of its enforcement journey. Holding a full-fledged enquiry is a condition precedent before it hands down adverse sanctions in the nature of 'cease and desist orders' and imposes monetary penalty on the delinquent enterprise and its officers in default. As per CCI's annual report for the year 2018-19, the CCI, in 127 cases of violation,

has imposed an aggregate penalty of Rs.13,881 crores and out of that, it succeeded in recovering a miniscule penalty amount of about Rs.60 crores. In almost all such cases, the aggrieved parties have gone in appeal and have succeeded in obtaining a stay on the penalty imposed subject to a deposit of a certain amount with the appellate body. With the result Indian competition regime is seriously infected with long drawn litigations which is not helpful to anyone.

As a matter of background, it may be noted that the three major dimensions of competition law are (i) prohibition of anti-competitive agreements; (ii) prohibition of abuse of dominance in the relevant market; and (iii) the regulation of certain high value combinations in terms of the thresholds prescribed in law. Any violation of the provisions relating to these three components give rise to a civil offence attracting penalty. However, when there is a non-compliance or disobedience of its directions, the CCI is empowered to impose 'fines' instead of a penalty.

On 1st October 2018, after gaining competition law enforcement experience of almost a decade, the Ministry of Corporate Affairs, Government of India set up a Competition Law Review Committee to review and recommend a robust overhaul of the competition regime by taking inputs of key stakeholders to suggest both substantive and procedural changes to the law. With a forward-looking approach and scope, the Competition Law Review Committee submitted its report in July 2019. On the basis of the said report, the Government of India, put in public domain, for comments, the proposed Competition Amendment bill, which, *inter-alia*, includes the introduction of provision relating to settlements and commitments for those enterprises against whom inquiries for alleged infringements of the Competition Act, 2002 have been initiated.

Sections 48A and 48B of the proposed Bill provide for the mechanisms for Settlement and Commitments respectively. The material difference between a settlement and a commitment is that the former relates only to pecuniary conditions to make good a particular violation while the latter is a more encompassing mechanism that includes performing any obligation that undertakes to prevent the said contravention from continuing in the future. The time frame for making an application for Settlement and that for Commitments also differs with respect to the receipt of the investigation report of the Directorate General (hereinafter referred to as the DG). A Settlement application may be made after the receipt of the

*The views expressed are personal views of the authors

report of the DG but before an order has been passed by the Competition Commission of India (hereinafter referred to as the CCI / Commission) under Sections 27 or 28 of the Competition Act, 2002 (hereinafter referred to as the Act); whereas a Commitments offer may be made prior to the receipt of the report of the DG but typically before the initiation of the final arguments in the matter.

However, given the disarray caused by COVID-19, establishing normalcy is not expected anytime soon. It is unfortunate that the proposed changes cannot be put to use as the Bill is yet to be moved and passed by the Parliament and the detailed procedural framework is yet to be worked out by the CCI. Thus, it appears that legislative change to build a mechanism of settlement and commitments in the law appears to be a distant goal. Under such circumstances, it is but imperative that a Settlement Scheme be launched by the CCI until such time the Bill is enacted. The optimality of any national competition policy can only be reached if it results in consumer welfare. The ultimate goal of the CCI is maximising consumer welfare which can be achieved through the settlement scheme in the absence of appropriate legislative changes.

A settlement scheme will also be a key tool in reducing pendency of cases by adopting quicker means of dispute redressal, which in turn will reduce the burden of the CCI by avoiding unnecessary litigation. It will also be a mechanism which will act as a catapult to India's plan of ease of doing business in India. This way, the litigants can dedicate their resources in boosting productivity rather than expending time and resources litigating at the CCI and the appellate courts. It can also prove to be beneficial for the CCI as it will free up the CCI's resources to investigate in more pressing matters. This concept is based on the premise that an efficient regulator can ensure deterrence more effectively thus guaranteeing better compliance to the Act¹.

The Scheme will prove to be beneficial for the CCI in a number of different ways that are discussed in the subsequent paragraphs. The first and most significant difference that may happen is immediate recovery of some portion of the penalty. According to the Annual Report of the CCI for the financial year 2018-2019, a total of Rs 13,821.36 Crores² worth penalty is yet to be realised. This figure has been derived from the following calculation:

Net penalty imposed from 2011 to 2019 = Rs 13881.73 Crores

Net penalty realised as of 31st March, 2019 = Rs 60.37 Crores

Therefore, Net penalty yet to be recovered = Rs (13881.73-60.37) Crores = Rs 13,821.36 Crores

In most of the cases, the order imposing penalty has been stayed by the National Company Law Appellate Tribunal (NCLAT)³. If a settlement scheme is launched by the CCI, one of the terms of settlement ought to be that the parties or the CCI will not challenge the settlement and withdraw any pending appeals. This will ensure immediate recovery of at least a portion of the pending penalty. This will also secure significant procedural efficiency by reducing the chances of subsequent

litigation. Although it does not deprive the litigant of his legal right to appeal, it is unlikely that a party to a settlement will appeal against the terms of settlement agreed upon by him⁴.

In this backdrop, a settlement scheme is the need of the hour and is potentially advantageous for the CCI as well as the undertakings.

“ A settlement scheme will also be a key tool in reducing pendency of cases by adopting quicker means of dispute redressal, which in turn will reduce the burden of the CCI by avoiding unnecessary litigation. It will also be a mechanism which will act as a catapult to India's plan of ease of doing business in India. This way, the litigants can dedicate their resources in boosting productivity rather than expending time and resources litigating at the CCI and the appellate courts.

While the settlement scheme ought to be intended for parties who after the receipt of the investigation report of the DG apply to settle the matter with the CCI as a one-time measure, the CCI in consultation with the Ministry of Corporate Affairs, Government of India should also offer settlement mechanism to all matters that have been finally decided by the CCI and may be pending at various stages of appeal. The scheme will act as a reward to delinquent parties and aims to achieve the desired procedural efficiency. In the settlement scheme, written submissions and the order are expected to be shorter since the Commission will not witness long-drawn and substantive arguments⁵. Parties will be given a chance to be heard by the CCI and be granted complete autonomy in negotiating or bargaining in the settlement scheme. However, the parties will not be compelled to enter into any settlement and may well continue with the normal course of appeal.

A brief outline of the procedure that may be adopted for implementing a settlement scheme for all ongoing investigations is encapsulated in the following points:

- **First Phase-** After receipt of the DG's investigation report, a timeline must be fixed and notified to the defendants to submit an application for settlement. If the defendants fail to submit an application within the specified date, the CCI will resume the enquiry and continue with the oral hearings.
- **Second Phase-** After that, a second timeline should be notified to the defendants within which time the CCI must make allegations against them and adduce evidence and the probable penalties that could be levied on them.
- **Third Phase-** In the third phase, the parties should file their written submissions that will broadly include their approvals and disapprovals of the CCI's claims.

¹ Kelley, Molly, *Settling for settlement: the European Commission's new cartel settlement procedure*. Wash. U. Global Stud. L. Rev. 9 (2010): 699.

² See Table D1 of CCI Annual Report 2018-2019. Available at <http://www.cci.gov.in/sites/default/files/annual%20reports/ENGANNUALREPORTCCI.pdf>.

³ See Table D4 of the CCI Annual Report 2018-2019. Available at <http://www.cci.gov.in/sites/default/files/annual%20reports/ENGANNUALREPORTCCI.pdf>.

⁴ Zheng, Rong, *Settlement procedure in EU commission's competition law enforcement: a "negotiation" game between the commission and cartelists* (January, 2017). Europa-Kolleg Hamburg, Institute for European Integration, Study Paper No 01/1. Available at https://epub.sub.uni-hamburg.de/epub/volltexte/2017/68821/pdf/Study_Paper_Rong_Zheng.pdf, last seen on 25/06/2020 at 12:43 PM.

⁵ Mehta, Kirtikumar, and Maria Luisa Tierno Centella, *Settlement procedure in EU cartel cases*. Competition L. Int'l 4 (2008): 11.

- **Fourth Phase-** Finally, the CCI should decide whether to continue with the settlement proceedings or not. If it does, then the only thing that remains to be done is to decide and determine settlement amount payable by the defendant. If the CCI decides to discontinue with the proceedings then it may revert to the original antitrust proceedings⁶.

Needless to mention, an appropriate mechanism ought to be developed for all matters which have also attained finality at the CCI.

SETTLEMENT SCHEMES AND REGULATIONS IN OTHER COMMERCIAL LAWS

It is not the first time that a settlement scheme has been sought by stakeholders. There have been instances before, some of them being very recent, where either the concerned ministry or the regulator has introduced regulations pertaining to settlement schemes. Although full-fledged regulations cannot be sanctioned given that the primary Bill, i.e. the Competition (Amendment) Bill, is yet to be introduced, yet a circular approving a temporary settlement scheme is a reasonable alternative that could be considered. There are three major commercial laws where settlement schemes have been launched and have seen immense success, namely :-

- **Company Law Settlement Schemes** - The Ministry of Corporate Affairs has launched several settlement schemes for companies, time and again. The purview of this article is limited to schemes introduced only under the Companies Act, 2013 (hereinafter referred to as the “2013 Act”). The four schemes floated since the inception of the 2013 Act are described below:

Company Law Settlement Scheme, 2014⁷ - After the 2013 Act laid down a stricter compliance regime, the MCA received notifications from all stakeholders requesting for a transitional period to file all pending statutory documents to evade penal actions and disqualification of directors as provided for by the 2013 Act. The scheme was launched by the MCA to condone the delays in filing statutory documents and also to give a chance to inactive companies to declare themselves as ‘dormant company’. The scheme was in force from 15th August, 2014 to 15th October, 2014.

Condonation of Delay Scheme, 2018⁸ - In 2017, there was again a string of representations from companies that had not complied with the provisions of the 2013 Act and were yet to file their financial statements. Some of them even went ahead with writ petitions seeking relief from the disqualifications. So the MCA, in 2018, launched a similar scheme for defaulting companies to file the necessary documents and to settle the matter amicably. This scheme was in force from 1st January, 2018 to 31st March, 2018.

⁶ EU Competition Law: Rules Applicable to Antitrust Enforcement (Volume I: General Rules). Available at <https://ec.europa.eu/competition/antitrust/legislation/legislation.html>, last seen on 25/06/2020 at 10:24 PM

⁷ Ministry of Corporate Affairs, Government of India – General Circular No. 34/2014, F. No. 02/13/2014 CL-V. See https://www.mca.gov.in/Ministry/pdf/circular_34_13082014.pdf.

⁸ Ministry of Corporate Affairs, Government of India – General Circular No. 16/2017, F. No. 02/04/2017-CL-V. See https://www.mca.gov.in/Ministry/pdf/Generalcircular16_29122017.pdf.

Companies Fresh Start Scheme, 2020⁹ (hereinafter referred to as the “CFSS”) - This scheme is materially similar to the previous schemes and was launched to ease the pressure on the companies whose business has been disrupted due to COVID-19. This scheme is currently in force and will continue to be so till 30th September, 2020.

LLP Settlement Scheme, 2020¹⁰ - This scheme is substantially similar to the CFSS and was introduced for the same reason, with the only difference being that it is applicable only to Limited Liability Partnerships. It was in force from 16th March, 2020 to 13th June, 2020.

- **Taxation Settlement Schemes-** The Ministry of Finance, in the last couple of years, has launched settlement schemes, both for Direct Taxes as well as Indirect Taxes. The structural aspects of both the schemes are illustrated below:

Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019¹¹- This scheme was launched as a part of the Finance Act, 2019 and is included in Chapter V of the Act. This scheme was applicable to the indirect taxes. This scheme provided relief to declarants from tax dues related to the following:

- A show cause notice or appeal arising out of a show cause notice pending as on the 30th day of June, 2019;
- An amount in arrears;
- An enquiry, investigation or audit where the amount is quantified on or before the 30th day of June, 2019;
- A voluntary disclosure¹².

The Direct Tax Vivad se Vishwas Act, 2020¹³ - The Vivad se Vishwas Scheme was launched through this Act. This Act provides for exemptions from tax arrears to declarants, who file an application before the designated authority on or before 31st December, 2020. Once an application is filed, be it before the deadline or after that, any legal proceeding pending against the declarant is presumed to be withdrawn¹⁴.

- **The Securities and Exchange Board of India (Settlement Proceeding) Regulations, 2018¹⁵** - The SEBI (Settlement Proceeding) Regulations (hereinafter referred to as the Regulations) were made with the intent to provide for the terms of settlement and procedure of settlement of specified proceedings¹⁶. According to the Regulations, a person against whom specified proceedings are pending or may be initiated, may make an application to SEBI to settle all the proceedings that have been or

⁹ Ministry of Corporate Affairs, Government of India – General Circular No. 12/2020, F. No. 02/01/2020-CL-V. See http://www.mca.gov.in/Ministry/pdf/Circular12_30032020.pdf.

¹⁰ Ministry of Corporate Affairs, Government of India – General Circular No. 6/2020, F. No. 17/61/2016(CL-V)-Pt-I. See https://www.mca.gov.in/Ministry/pdf/GeneralCircular06_04032020.pdf.

¹¹ The Finance (No. 2) Act, 2019, No. 23 of 2019. See <http://egazette.nic.in/WriteReadData/2019/209695.pdf>.

¹² See Section 124 of the Finance Act, 2019.

¹³ Act No. 3 of 2020. See <http://egazette.nic.in/WriteReadData/2020/218716.pdf>.

¹⁴ See Sections 3 and 4 of the the Direct Tax Vivad se Vishwas Act, 2020.

¹⁵ Regulation No. SEBI/LAD-NRO/GN/ 2018/48. See https://www.sebi.gov.in/legal/regulations/dec-2018/securities-and-exchange-board-of-india-settlement-proceeding-regulations-2018_41212.html.

¹⁶ See Regulation 2(f) of the SEBI (Settlement Proceeding) Regulations, 2018.

may be initiated against him. The application will not be considered if it is not made within 60 days of receipt of a show cause notice. However, SEBI may consider such application if it is satisfied that there was sufficient cause for not filing it within the specified period¹⁷.

All the aforesaid schemes provide for settlement of proceedings and may serve as frameworks for devising a competition law settlement scheme. What the MCA has done to cope with the disturbances caused by the pandemic is of particular mention. Even otherwise, a settlement scheme is always expeditious and cost-effective, as has been demonstrated by the Finance Ministry and the SEBI. Therefore, it is needless to say a similar scheme, if launched by the CCI, will prove to be a great leap.

“ The *Vivad se Vishwas* Scheme was launched through this Act. This Act provides for exemptions from tax arrears to declarants, who file an application before the designated authority on or before 31st December, 2020. Once an application is filed, be it before the deadline or after that, any legal proceeding pending against the declarant is presumed to be withdrawn

INTERNATIONAL JURISPRUDENCE ON COMPETITION LAW SETTLEMENT SCHEMES PURSUANT TO EXECUTIVE GUIDELINES

Most of the major jurisdictions have laws in place to govern settlement procedures in antitrust disputes. However, a few countries like South Africa and Germany have informal guidelines issued by the Competition Commission and the Federal Cartel Office (Bundeskartellamt) respectively that provide for the basis of settlement procedures in those countries. The said guidelines are briefly elucidated below:

South Africa¹⁸ - In South Africa, there is no formal settlement procedure even though the South African Commission prefers to settle cartel cases in practice. In the absence of a proper legislation to regulate the settlement agreements, the Commission has established some guidelines, namely, Guidelines for the Determination of Administrative Penalties for Prohibited Practices with effect from 1st May, 2015 that covers within its ambit settlement agreements.

The guidelines serve as a reference to the general methodology the South African Commission and the Tribunal may adopt while deciding consent orders and settlement agreements. Any decision taken by their Commission with respect to settlements are subject to approval by the Tribunal, although they are usually approved by the latter. The natural consequence of a settlement is a discounted penalty. Such discounts are usually in the range of 10%-50%. The percentage of discount



is decided by the stage of proceedings at which a firm decides to settle. If a firm settles at the early stages of an investigation, then it is offered a heavier discount compared to which a firm is offered when it settles at the eve of litigation.

Germany¹⁹ - Germany too has a model similar to South Africa where there is no binding law on settlements. But in recent years, an informal practice has developed where parties under investigation enter into settlements with the Bundeskartellamt. Reductions on penalty are granted when parties opt for settlements.

There are no formal guidelines in place. However, a number of general principles govern the process that are based on the European Commission Regulations. A prerequisite of a settlement is a plea of guilt by the undertaking that wishes to settle. In return, the FCO grants a reduction of approximately 10% on the fine apart from any reduction granted under the leniency application²⁰.

These two instances go on to show that even without any legislative sanction, settlement schemes are fully effective and promote efficiency in regulatory affairs.

CONCLUSION

A competition law settlement scheme will not only benefit the Commission and the defendants but will also improve access to justice for the victims of the antitrust infringements. With the prosecution expedited, the informants will get a quicker chance to initiate proceedings for private damages²¹. Settlements are convenient, more efficient and a more effective way of providing remedies, and most importantly promote consumer welfare. The ability of agencies to intervene more quickly through settlement may increase the chance of successful enforcement by restoring effective competition in the market faster. Further, settlement negotiations give companies the opportunity to propose remedies²². Therefore, it is extremely pertinent that a one-time competition law settlement scheme be introduced by the CCI to accelerate the dispute resolution process for vertical agreements and abuse of dominance matters as there is a long way to go before normalcy is restored and the Bill is enacted. Recovery of penalties will definitely help a cash strapped Government of India which is very vigorously fighting this pandemic. Company secretaries should be at the forefront of the implementation of this initiative. 

¹⁹ Guidelines for the setting of fines in cartel administrative offence proceedings (Effective from 25.06.2013). See https://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Leitlinien/Guidelines%20for%20the%20setting%20of%20fines.pdf?__blob=publicationFile&v=3.

²⁰ Schnelle, Soyez, Cartels 2020 (Germany). Available at <https://www.globallegalinsights.com/practice-areas/cartels-laws-and-regulations/germany>, last seen on 29/06/2020 at 09:10 PM

²¹ Craig, Lianne, and Lesley Hannah, *Collective Proceedings and Settlements before the CAT: A New Dawn*. Competition LJ 12 (2013): 408.

²² Wright, Ginsburg, *The Costs and Benefits of Antitrust Consents (DAF/COMP/WD(2016)81)*, Directorate for Financial and Enterprise Affairs Competition Committee, Organisation for Economic Co-operation and Development. See [https://one.oecd.org/document/DAF/COMP/WD\(2016\)81/en/pdf](https://one.oecd.org/document/DAF/COMP/WD(2016)81/en/pdf).

¹⁷ See Regulations 3 and 4 of the SEBI (Settlement Proceeding) Regulations, 2018.

¹⁸ Guidelines for the Determination of Administrative Penalties for Prohibited Practices (Effective from 1 May 2015). See <http://www.compcom.co.za/wp-content/uploads/2018/11/Final-Guidelines-for-Determination-of-Admin-Penalties-MAY-2015.pdf>.

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LEGAL WORLD



- THE ALOTE ESTATE & ANR v. R.B. SETH HIRALAL KALYANMAL & ORS [SC]
- QUINN LOGISTICS INDIA PVT. LTD. & ORS v. REGISTRAR OF COMPANIES [NCLAT]
- REGIONAL P.F. COMMISSIONER v. T.V. BALASUBRAMANIAN (RP) [NCLAT]
- FICUS PAX PRIVATE LTD & ORS v. UNION OF INDIA& ORS [SC]
- SOUTH EAST ASIA MARINE ENGINEERING & CONSTRUCTIONS LTD. (SEAMEC LTD.) v. OIL INDIA LIMITED [SC]
- CMD, MAHANADI COALFIELDS LTD v. RABINDRANATH CHOUBEY [SC]
- ASSISTANT COMMISSIONER (CT) LTU, KAKINADA & ORS v. M/S GLAXO SMITH KLINE CONSUMER HEALTH CARE LIMITED [SC]
- IN RE: CARTELISATION INDUSRIAL & AUTOMOTIVE BEARINGS [CCI]
- RH AGRO PRIVATE LTD v. STATE BANK OF INDIA & ORS [CCI]



Corporate Laws

Landmark Judgement

LMJ 07:07:2020

THE ALOTE ESTATE & ANR v. R.B. SETH HIRALAL KALYANMAL & ORS [SC]

Civil Appeal No. 1010 of 1966.

A.N.Grover, J.C.Shah & K.S.Hegde, JJ. [Decided on 20/02/1970]

Equivalent citations: 1971 AIR SC 920; 1970 SCR (3) 740; 1970 SCC (1) 425; (1970) 40 Comp Cas 1116 (SC).

Indian Companies Act, 1913- section 156- liquidation of company- liability of contributories- fully paid shares allotted for transfer of land- whether valuation of the land could be questioned at the time of liquidation-Held, No.

Brief facts:

The Appellants were allotted 18,000 fully paid up shares in Vikram sugar Mills Ltd [the company] in consideration of transferring 6,000 acres of agricultural land to the company for cultivation of sugar-cane. After a petition was filed for winding up the company, two joint Liquidators were appointed and they took steps to settle the list of contributories. While these proceedings were pending an application was filed by Respondent No. 1 praying that an enquiry be made in respect of the price paid by the Appellant for the 6,000 acres of land. It was urged that such enquiry would show the value of the land to be well below the consideration for which the shares were allotted and that the Appellants would therefore be liable as contributories in respect of the difference.

The company Judge held that in a proceeding for winding up and while settling the list of contributories it was not open to go behind the transaction entered into at the time of the formation of the company and that the consideration which had been freely accepted by The company could not be challenged as being inadequate in the absence of any allegation of fraud. However, the Division Bench, in appeal, held that an inquiry would be necessary as there was an indication that the allottees of the shares had paid only a fraction of the nominal value. Hence the present appeal before the Supreme Court.

Decision: Appeal allowed.

Reason:

Now S. 156 of the Act deals with the liability as contributories. Clause (iv) of sub-s. (1) provides that in the case of a company

limited by shares no contribution shall be required from any member exceeding the amount unpaid on the shares in respect to which he is liable as a present or past member. Section 158 defines the term “contributory”. It means every person liable to contribute to the assets of a company in the event of its being wound up. Under s. 184 the court shall settle the list of contributories with power to rectify the register of members in all cases where rectification is required in pursuance of the Act. Sections 185 and 186 confer power on the court to require delivery of property from a contributory and to order payment of debts determined by it.

The material question, therefore, was whether the appellants could be placed on the list of contributories. It could hardly be disputed that a shareholder of fully paid up shares will not be placed on the list of contributories and made to contribute towards the assets of the company unless the register is rectified and it is determined in appropriate proceedings that he is not a fully paid up shareholder.

In England the rule which has been accepted as settled is that although the court can inquire into an allegation that owing to fraud the contract relating to fully paid up shares was vitiated but unless the contract is impeached mere inadequacy of price is not sufficient of itself to invalidate the contract. In the words of Vaughan Williams, L.J. in *In re Innes & Co. Limited (1903) 2 Ch. Div. 254,262:*

“You must shew that, these shares not having been paid for at -all, the contract for purchase was a colourable transaction, and that in truth and in fact, qua value, these shares were not part of the consideration.....”

As stated in Palmer’s Company Law, 21st Edition, pages 190- 191, the consideration for the allotment of shares may be money or money’s worth e.g., the transfer to the company of property. If a valid contract is made for the acceptance by the company of specified property in payment of shares the court will not whilst the contract stands inquire into the value of the consideration even at the instance of -the liquidator. Where, however, the contract is fraudulent or shows on the face of it that the consideration given to the company is illusory or is clearly not equivalent to the nominal value of the shares the shares cannot, to this extent, be treated as fully paid and the shareholder may be held liable to pay for them in full. It is significant that no steps were taken by the liquidators to have the register rectified or the contract entered into by the company with the appellants avoided by means of appropriate proceedings. Even in the application filed by respondent No. 1 in October 1961 there was no allegation of fraud. The fact stated related more to inadequacy of price or consideration and not to its being illusory or the like. In our judgment the learned single judge was right and the Division Bench was in error in directing an inquiry into the question whether the appellants had paid consideration which was inadequate. The appeal is consequently allowed and the order of the Division Bench is set aside and that of the learned single judge restored with costs.

LW 48:07:2020**QUINN LOGISTICS INDIA PVT. LTD. & ORS v. REGISTRAR OF COMPANIES [NCLAT]****Company Appeal (AT) No. 238 of 2019****J.K.Jain, Balvinder Singh, A.K.Mishra [Decided on 12/06/2020]****Companies Act, 2013- section - compounding of offences- penalty for not holding AGM-****Brief facts:**

The Appellant Company and its three Directors filed this Appeal against the order dated 19.07.2019 whereby National Company Law Tribunal, Hyderabad allowed the Compounding Application subject to pay the Penalty of Rs. 27,09,000/- by each appellant total Rs. 1,08,36,000/-.

Ld. Tribunal held that the Appellant Company and its directors are liable to be penalized under Section 168 of Companies Act, 1956 for the violation of Section 166 of the Companies Act, 1956 the violation continued up to 31.03.2014 thereafter, they are liable to be penalized under Section 99 of Companies Act 2013 for violation of the Sub-Section (1) Section 96 of the Companies Act, 2013 with effect from 01.04.2014. Ld. Tribunal after hearing the parties allowed the Compounding Applications subject to pay the penalty as indicated above. Being aggrieved with this order, Appellants filed this Appeal.

Decision: Dismissed.**Reason:**

After hearing learned Counsel for the parties, we have gone through the record. Admittedly, the Appellant Nos. 2 to 4 did not hold Annual General Meeting of the Company for the years 2012, 2013, 2014 and 2015 and thus violated the Provisions under Section 166 of Companies Act which is punishable under Section 168 of the Companies Act, 1956 till 31.03.2014. Thereafter, violated the Provisions under sub-section (1) of Section 96 of Companies Act, 2013 which is punishable under Section 99 of Companies Act, 2013. The Act came into force on 01.04.2014. Hence, the period of violation is 01.04.2014 to 09.07.2017. RoC in his Report has mentioned the total amount of Penalty to be imposed on each Appellant which is 2,35,90,000/- however, the Ld. Tribunal has imposed Penalty on each Appellant 27,09,000/-

This Tribunal in the case of Company Appeal (AT) No. 49, 50, 51, 52 and 53 of 2016 decided on 28th February, 2017 held as under:

“18. In this appeal, as we find that the appellants have only taken plea that the violation occurred due to inadvertence and without intention and not prejudicial to the interest of any member or creditors or others dealing with the company and nor did affect public interest, we are of the view that the Tribunal rightly brought down the penalty which is less than 1/5th of the maximum amount. In this background no interference is called for against the impugned order.”

In this appeal, the same grounds are taken for reducing the amount which were taken in the Company Appeal No. 50 of 2016. Ld. Tribunal to maintain the consistency has to impose

Penalty which is as per calculation maximum fine Rs. 2, 35, 90,000/- 1/5th of the maximum amount is Rs. 47, 18,000/-. However, Ld. Tribunal has imposed Penalty Rs. 27, 09,000/- which is less than 1/5th of the Maximum amount. Therefore, we are of the view that Ld. Tribunal has undertaken a lenient view in imposing Penalty. We find no ground to interfere in the impugned order. Hence, the Appeal is hereby dismissed. No cost.

LW 49:07:2020**REGIONAL P.F.COMMISSIONER v.T.V.BALASUBRAMANIAN (RP) [NCLAT]****Company Appeal (AT) (Insolvency) No. 1521 of 2019****M.Venugopal, V. P. Singh & Shreesha Merla [Decided on 08/06/2018]****Insolvency and Bankruptcy Act, 2016- sections 7 & 14 - creation of encumbrance over assets during moratorium- attachment made before the initiation of CIRP- attachment registered during CIRP- whether cancellation of attachment tenable-Held, No.****Brief facts:**

The appellant had attached the property of the corporate debtor, against the PF dues, before the initiation of the CIRP. However, the sub-registrar registered the attachment during the CIRP. The RP moved an application before the NCLT to cancel the said attachment as it is in violation of the moratorium conditions. The NCLT also cancelled the attachment and the appellant approached the NCLAT in appeal challenging the cancellation.

It is stated by the Respondent that the Learned Adjudicating Authority while passing the impugned Order duly considered the immovable properties belonging to the Corporate Debtor, which were attached and under the legal custody of Recovery Officer, EPFO and only upon such information proceeded and passed the impugned Order.

Decision: Allowed.**Reason:**

The Learned Adjudicating Authority has allowed the application of the Resolution Professional on the pretext that during Moratorium, no encumbrance or charge can be created over the property, by any authority including the Respondent, except in accordance with the provision of IBC 2016 even for the dues which are payable by the Corporate Debtor.

The Adjudicating Authority has further observed that the provision of Section 238 of the IBC shall have effect not withstanding anything in consistent therewith contained in any other law for the time being in force. In the circumstances, the Adjudicating Authority allowed the M.A. and passed the impugned Order that encumbrance, which had been created by way of attachment, registered by the Respondent stands cancelled.

It is pertinent to mention that the Adjudicating Authority has passed the impugned Order without considering the attachment order dated 04th August, 2017. It is on record that the Recovery Officer in order to realise outstanding dues, attached the immovable properties belonging to the Corporate Debtor, in

the exercise of powers vested in him under Section 8(B) of the EPF and M.A. Act, 1952, vide order of attachment EPFCP-16 bearing reference No. T.N./VL/6294/Recovery/2017 dated 04th August, 2017. On perusal of this letter (Annexure A-4), it is clear that Authorised officer, Regional officer, Vellore, issued a Recovery Certificate to the Recovery Officer, Regional Office, Vellore in exercise of powers conferred under Section 8(B) to 8(G) of the Employees Provident Fund and Miscellaneous Act, 1952. Copy of Order of attachment EPFCP-16 is also enclosed with the attachment order passed by the Recovery Officer, Employees Provident Fund Organization. Thus, it is undisputed that the attachment of immovable property of the Corporate Debtor was made by the Recovery Officer EPFO Organization on 04th August 2017 much before the petition under Section 7 of the Code. Appellant has also filed the letter (Annexure A-5) issued to the Sub Registrar for issuing attachment certificated dated 10th May, 2018.

On perusal of the above-mentioned letter, it is clear that the Recovery Officer had issued a reminder to Sub Registrar for issuance of encumbrance certificate about the property attached by EPFO Vellore, to put a restriction on the Corporate Debtor from alienating the property, already attached by the Recovery Officer for the dues of Employees Provident Fund, by Order dated 04th August, 2017. The Recovery Officer has also demanded the encumbrance certificate duly incorporating the attachment of EPFO.

It is thus clear that the Adjudicating Authority failed to take notice that attachment of the property of the corporate debtor was made much before the initiation of CIRP, but it was only recorded in the register during CIRP. It is on record that the impugned order is passed without considering the objections of the Recovery Officer, EPFO, though the objection by EPFO was already filed in the Registry of NCLT. In the circumstances, we are of the considered opinion that Appeal deserves to be allowed.



General Laws

LW 50:07:2020

FICUS PAX PRIVATE LTD & ORS v. UNION OF INDIA & ORS [SC]

Writ Petition (C) Diary No. 10983 of 2020 along with batch of petitions

Ashok Bhushan, S K Kaul & M.R.Shah, JJ. [Decided on 12/06/2020]

Disaster Management Act, 2005-section 10- COVID-19 lock down measures- compulsory payment of wages- whether tenable- directions issued.

Brief facts:

All these writ petitions, except one, have been filed by different employers, employers' associations questioning the

orders issued under Disaster Management Act, 2005 and other consequential orders issued by different States where directions have been issued that all the employers be it in the industries or in the shops, commercial establishment, shall make payment of wages of their workers, at their work place, on the due date, without any deduction, for the period their establishments are under closure during the lockdown.

In the writ petitions apart from challenging the D.O. dated 20.03.2020 issued by the Secretary, Government of India, Ministry of Labour and Employment, order dated 29.03.2020 issued by Government of India, Ministry of Home affairs, in exercise of powers under Section 10(2)(l) of Disaster Management Act, 2005, the vires of Section 10(2)(l) of Disaster Management Act, 2005, has also been questioned, in event, Section 10(2)(l) is interpreting as conferring power to Central Government to direct the private employers to make full payment of wages to the employees during the period of lockdown.

Decision: Interim directions issued

Reason:

It cannot be disputed that the lockdown measures enforced by the Government of India under the Disaster Management Act, 2005, had equally adverse effect on the employers as well as on employees. Various Industries, establishments were not allowed to function during the said period and those allowed to function also could not function to their capacity. There can be no denial that lockdown measures which were enforced by the Government of India had serious consequences both on employers and employees. The period of Unlock having begun from 01.06.2020 and even prior to that some of the industries were permitted to function by the Government of India by different guidelines, most of the industries and establishments have re-opened or are re-opening, require the full workforce.

It cannot be disputed that both Industry and Labourers need each other. No Industry or establishment can survive without employees/labourers and vice versa. We are thus of the opinion that efforts should be made to sort out the differences and disputes between the workers and the employers regarding payment of wages of above 50 days and if any settlement or negotiation can be entered into between them without regard to the order dated 29.03.2020, the said steps may restore congenial work atmosphere.

We thus direct following interim measures which can be availed by all the private establishment, industries, factories and workers Trade Unions/ Employees Associations etc. which may be facilitated by the State Authorities: -

- i) The private establishment, industries, employers who are willing to enter into negotiation and settlement with the workers/employees regarding payment of wages for 50 days or for any other period as applicable in any particular State during which their industrial establishment was closed down due to lockdown, may initiate a process of negotiation with their employees organization and enter into a settlement with them and if they are unable to settle by themselves submit a request to concerned labour authorities who are entrusted with the obligation under the different statute to conciliate the dispute between the parties who on receiving such request, may call the concerned Employees Trade Union/workers Association/workers to appear on a date for negotiation, conciliation

and settlement. In event a settlement is arrived at, that may be acted upon by the employers and workers irrespective of the order dated 29.03.2020 issued by the Government of India, Ministry of Home Affairs.

- ii) Those employers' establishments, industries, factories which were working during the lockdown period although not to their capacity can also take steps as indicated in direction No. (i).
- iii) The private establishments, industries, factories shall permit the workers/employees to work in their establishment who are willing to work which may be without prejudice to rights of the workers/employees regarding unpaid wages of above 50 days. The private establishments, factories who proceed to take steps as per directions (i) and (ii) shall publicise and communicate about their steps to workers and employees for their response/participation. The settlement, if any, as indicated above shall be without prejudice to the rights of employers and employees which is pending adjudication in these writ petitions.
- iv) The Central Government, all the States/UTs through their Ministry of Labour shall circulate and publicise this order for the benefit of all private establishment, employers, factories and workers/employees.

LW 51:07:2020

SOUTH EAST ASIA MARINE ENGINEERING & CONSTRUCTIONS LTD. (SEAMEC LTD.) v. OIL INDIA LIMITED [SC]

Civil Appeal No. 673 of 2012 with Civil Appeal No. 900 of 2012

N.V. Ramana, M.M.Santhanogodar & Ajay Rastogi [Decided on 11/05/2020]

Arbitration and Conciliation Act, 1996- clause as to price rise in HSD- tribunal interpreted as government act- increase allowed in the award- whether correct interpretation- Held, No

Brief facts:

The appellant was awarded the work pursuant to a tender floated by the Respondent. The contract agreement was for the purpose of well drilling and other auxiliary operations in Assam. During the subsistence of the contract, the prices of High Speed Diesel ("HSD"), one of the essential materials for carrying out the drilling operations, increased. Appellant raised a claim that increase in the price of HSD, an essential component for carrying out the contract triggered the "change in law" clause under the contract (i.e., Clause 23) and the Respondent became liable to reimburse them for the same. When the Respondent kept on rejecting the claim, the Appellant eventually invoked the arbitration clause and the dispute was referred to an Arbitral Tribunal comprising of three arbitrators.

The Arbitral Tribunal issued the award in favour of the appellant. The Arbitral Tribunal held that while an increase in HSD price through a circular issued under the authority of State or Union is not a "law" in the literal sense, but has the "force of law" and thus falls within the ambit of Clause 23. On appeal, the District Court upheld the award and held that the findings of the tribunal were not without basis or against the public policy of India or patently illegal and did not warrant judicial interference.

The Respondent challenged the order of the District Judge before the High Court. By the impugned judgment, the High Court, allowed the appeal and set aside the award passed by the Arbitral Tribunal. Hence the present appeal to the Supreme Court.

Decision: Appeal dismissed.

Reason:

The question in the present case is whether the interpretation provided to the contract in the award of the Tribunal was reasonable and fair, so that the same passes the muster under Section 34 of the Arbitration Act?

Having regards to the law discussed herein, we do not subscribe to either the reasons provided by the Arbitral Tribunal or the High Court. Although, the Arbitral Tribunal correctly held that a contract needs to be interpreted taking into consideration all the clauses of the contract, it failed to apply the same standard while interpreting Clause 23 of the Contract.

We also do not completely subscribe to the reasoning of the High Court holding that Clause 23 was inserted in furtherance of the doctrine of frustration. Rather, under Indian contract law, the effect of the doctrine of frustration is that it discharges all the parties from future obligations. In order to mitigate the harsh consequences of frustration and to uphold the sanctity of the contract, the parties with their commercial wisdom, chose to mitigate the risk under Clause 23 of the contract.

In this context, the interpretation of Clause 23 of the Contract by the Arbitral Tribunal, to provide a wide interpretation cannot be accepted, as the thumb rule of interpretation is that the document forming a written contract should be read as a whole and so far as possible as mutually explanatory. In the case at hand, this basic rule was ignored by the Tribunal while interpreting the clause.

The contract was entered into between the parties in furtherance of a tender issued by the Respondent herein. After considering the tender bids, the Appellant issued a Letter of Intent. In furtherance of the Letter of Intent, the contract (Contract No. CCO/FC/0040/95) was for drilling oil wells and auxiliary operations. It is important to note that the contract price was payable to the 'contractor' for full and proper performance of its contractual obligations. Further, Clauses 14.7 and 14.11 of the Contract states that the rates, terms and conditions were to be in force until the completion or abandonment of the last well being drilled.

From the aforesaid discussion, it can be said that the contract was based on a fixed rate. The party, before entering the tender process, entered the contract after mitigating the risk of such an increase. If the purpose of the tender was to limit the risks of price variations, then the interpretation placed by the Arbitral Tribunal cannot be said to be possible one, as it would completely defeat the explicit wordings and purpose of the contract. There is no gainsaying that there will be price fluctuations which a prudent contractor would have taken into margin, while bidding in the tender. Such price fluctuations cannot be brought under Clause 23 unless specific language points to the inclusion.

The interpretation of the Arbitral Tribunal to expand the meaning of Clause 23 to include change in rate of HSD is not a possible interpretation of this contract, as the appellant did not introduce any evidence which proves the same.

The other contractual terms also suggest that the interpretation of the clause, as suggested by the Arbitral Tribunal, is perverse. For instance, Item 1 of List II (Consumables) of Exhibit C (Consolidated Statement of Equipment and Services Furnished by Contractor or Operator for the Onshore Rig Operation), indicates that fuel would be supplied by the contractor, at his expense. The existence of such a clause shows that the interpretation of the contract by the Arbitral Tribunal is not a possible interpretation of the contract.

For the aforesaid reasons, we are not inclined to interfere with the impugned judgment and order of the High Court setting aside the award. The appeal is accordingly dismissed. There shall be no order as to costs.



Industrial & Labour Laws

LW 52:07:2020

CMD, MAHANADI COALFIELDS LTD v. RABINDRANATH CHOUBEY [SC]

Civil Appeal No. 9693 of 2013

Arun Mishra & M.R. Shah, JJ. [Decided on 27/05/2020]

Payment of Gratuity Act, 1970- forfeiture of gratuity-pendency of disciplinary proceedings after superannuation- whether employer can forfeit the gratuity- Held, Yes.

Brief facts:

The short but interesting questions of law which fell for consideration of this Court are, (i) as to whether it is permissible in law for the appellant (employer) to withhold the payment of gratuity of the respondent (employee), even after his superannuation from service, because of the pendency of the disciplinary proceedings against him?, and (ii) where the departmental enquiry had been instituted against an employee while he was in service and continued after he attained the age of superannuation, whether the punishment of dismissal can be imposed on being found guilty of misconduct in view of the provisions made in Rule 34.2 of the CDA Rules of 1978?

Decision: Appeal allowed.

Reason:

Once it is held that a major penalty which includes the dismissal from service can be imposed, even after the employee has attained the age of superannuation and/or was permitted to retire on attaining the age of superannuation, provided the disciplinary proceedings were initiated while the employee was in service, sub-section 6 of Section 4 of the Payment of Gratuity Act shall be attracted and the amount of gratuity can be withheld till the disciplinary proceedings are concluded.

It is required to be noted that in the present case the disciplinary proceedings were initiated against the respondent employee for very serious allegations of misconduct alleging dishonestly causing coal stock shortages amounting to Rs.31.65 crores and thereby causing substantial loss to the employer. Therefore, if such a charge is proved and punishment of dismissal is given thereon, the provisions of sub-section 6 of Section 4 of the Payment of Gratuity Act would be attracted and it would be within the discretion of the appellant employer to forfeit the gratuity payable to the respondent. Therefore, the appellant -employer has a right to withhold the payment of gratuity during the pendency of the disciplinary proceedings.

Rule 34 (2) of the CDA Rules provides in case disciplinary proceeding, if instituted while the employee was in service whether before his retirement or during his reemployment, such proceedings shall be continued and concluded by the authority by which it was commenced in the same manner as if an employee had continued in service. There is a deemed fiction created by the rule concerning the continuance of employee in service during the departmental proceeding. The legal fiction is required to be given a logical effect.

In view of the various decisions, it is apparent that under Rule 34.2 of the CDA Rules inquiry can be held in the same manner as if the employee had continued in service and the appropriate major and minor punishment commensurate to guilt can be imposed including dismissal as provided in Rule 27 of the CDA Rules and apart from that in case pecuniary loss had been caused that can be recovered. Gratuity can be forfeited wholly or partially.

We reiterate that the Act does not deal with the matter of disciplinary inquiry, it contemplates recovery from or forfeiture of gratuity wholly or partially as per misconduct committed and does not deal with punishments to be imposed and does not supersede the Rules 34.2 and 34.3 of the CDA Rules. The mandate of Section 4(6) of recovery of loss provided under Section 4(6) (a) and forfeiture of gratuity wholly or partially under Section 4(6) (b) is furthered by the Rules 34.2 and 34.3. If there cannot be any dismissal after superannuation, intentment of the provisions of Section 4(6) would be defeated.

The provisions of section 4(1) and 4(6) of Payment of Gratuity Act, 1972 have to be given purposive interpretation, and no way interdict holding of the departmental inquiry and punishment to be imposed is not the subject matter dealt with under the Act. Thus considering the provisions of Rules 34.2 and 34.3 of the CDA Rules, the inquiry can be continued given the deeming fiction in the same manner as if the employee had continued in service and appropriate punishment, including that of dismissal can be imposed apart from the forfeiture of the gratuity wholly or partially including the recovery of the pecuniary loss as the case may be.

In view of the above and for the reasons stated above and in view of the decision of three Judge Bench of this Court in Ram Lal Bhaskar (supra) and our conclusions as above, it is observed and held that (1) the appellant – employer has a right to withhold the gratuity during the pendency of the disciplinary proceedings, and (2) the disciplinary authority has powers to impose the penalty of dismissal/major penalty upon the respondent even after his attaining the age of superannuation, as the disciplinary proceedings were initiated while the employee was in service.



Tax Laws

LW 53:07:2020

ASSISTANT COMMISSIONER (CT) LTU, KAKINADA & ORS v. M/S GLAXO SMITH KLINE CONSUMER HEALTH CARE LIMITED [SC]

Civil Appeal No. 2413 of 2020 (@ SLP(C) No. 128920f 2019)

A.M. Khanwilkar & D.Maheshwari, JJ. [Decided on 06/05/2020]

Tax assessment- Limitation period to file appeal expired-writ petition filed in the High court- High court allowed the petition- whether correct-Held, No.

Brief facts:

The moot question in this appeal emanating from the impugned judgment and order is whether the High Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India ought to entertain a challenge to the assessment order on the sole ground that the statutory remedy of appeal against that order stood foreclosed by the law of limitation?

Decision: Appeal allowed.

Reason:

Indubitably, the powers of the High Court under Article 226 of the Constitution are wide, but certainly not wider than the plenary powers bestowed on this Court under Article 142 of the Constitution. Article 142 is a conglomeration and repository of the entire judicial powers under the Constitution, to do complete justice to the parties. Even while exercising that power, this Court is required to bear in mind the legislative intent and not to render the statutory provision otiose.

In a recent decision of a three Judge Bench of this Court in *Oil and Natural Gas Corporation Ltd v. Gujarat Energy Transmission Corporation Ltd & Ors (2017) 5 SCC 42*, the statutory appeal filed before this Court was barred by 71 days and the maximum time limit for condoning the delay in terms of Section 125 of the Electricity Act, 2003 was only 60 days. In other words, the appeal was presented beyond the condonable period of 60 days. As a result, this Court could not have condoned the delay of 71 days.

Notably, while admitting the appeal, the Court had condoned the delay in filing the appeal. However, at the final hearing of the appeal, an objection regarding appeal being barred by limitation was allowed to be raised being a jurisdictional issue and while dealing with the said objection, the Court concluded that Section 5 of the Limitation Act, 1963 cannot be invoked by the Court for maintaining an appeal beyond maximum prescribed period in Section 125 of the Electricity Act.

Be it noted, when there is a statutory command by the legislation as regards limitation and there is the postulate that delay can be condoned for a further period not exceeding sixty days, needless to say, it is based on certain underlined, fundamental, general issues of public policy as has been held in *Union Carbide Corpn. v. Union of India, (1991) 4 SCC 584*.

To put it in a different way, the prescription of limitation in a case of present nature, when the statute commands that this Court may condone the further delay not beyond 60 days, it would come within the ambit and sweep of the provisions and policy of legislation. It is equivalent to Section 3 of the Limitation Act. Therefore, it is uncondonable and it cannot be condoned taking recourse to Article 142 of the Constitution.

A priori, we have no hesitation in taking the view that what this Court cannot do in exercise of its plenary powers under Article 142 of the Constitution, it is unfathomable as to how the High Court can take a different approach in the matter in reference to Article 226 of the Constitution. The principle underlying the rejection of such argument by this Court would apply on all fours to the exercise of power by the High Court under Article 226 of the Constitution.

Arguendo, reverting to the factual matrix of the present case, it is noticed that the respondent had asserted that it was not aware about the passing of assessment order dated 21.6.2017 although it is admitted that the same was served on the authorised representative of the respondent on 22.6.2017.

Taking any view of the matter, therefore, the High Court ought not to have entertained the subject writ petition filed by the respondent herein. The same deserved to be rejected at the threshold. Accordingly, we allow this appeal and set aside the impugned judgment and order passed by the High Court and dismiss the writ petition.



Competition Law

LW 54:07:2020

IN RE: CARTELISATION INDUSRIAL & AUTOMOTIVE BEARINGS [CCI]

Suo Motu Case No. 05 of 2017

A.K.Gupta, Sangeeta Verma & B.S.Bishnoi. [Decided on 05/06/2020]

Competition Act, 2002-sections 3 & 46- cartelisation-increase in price- LPR application by one participant-cartelisation established.

Brief facts:

The present case was initiated by the Commission suo motu, pursuant to receipt of an application dated 26.06.2017 under Section 46 of the Competition Act, 2002 ("the Act") read with Regulation 5 of the Competition Commission of India (Lesser Penalty) Regulations, 2009 ("LPR") filed on behalf of FAG Bearings India Ltd. (now, Schaeffler India Ltd.). ("Schaeffler").

In the said application, it was disclosed that Schaeffler, alongwith four other companies, namely ABC Bearings Limited (now amalgamated with Timken India Limited) ("Timken"), National Engineering Industries Ltd. ("NEI"), SKF India Ltd. ("SKF") and Tata Steel Ltd., Bearing Division ("Tata Bearing"), was involved in cartelisation in the domestic industrial and automotive bearings market from 2009 to 2014.

From such application, the Commission noted that when the steel prices (which is the major raw material to manufacture bearings) started increasing 2009 onwards, there was co-ordinated action amongst the captioned five companies to pass on such increase to the automotive and industrial Original Equipment Manufacturer ("OEM") customers and in the distribution segment of the market. Such cartelisation existed 2009 onwards till late 2014 and was confined only to the Indian market. Such co-ordination operated across industry segments within India to seek uniform price increase from various OEMs. As a general practice, if there was an increase in the manufacturing cost of bearings, including due to increase in the steel prices, the OEMs accommodated certain increase in price from time to time. However, they generally did so only when all the suppliers demanded for such an increase. Hence, under the cartel arrangement, these five companies agreed on the percentage increase in steel price that each of them would represent to the OEMs, to seek a price increase from them. The rationale behind such co-ordination was to simultaneously send out price increase letters to the OEMs and distributors in the aftermarket, specifying the percentage increase in steel prices and a request to increase the existing supply prices, as otherwise the likelihood of getting a price increase was believed to be less certain.

Decision: Cartel established. Cease & desist order passed.

Reason:

Thus, on the basis of the evidence regarding the two meetings held on 03.11.2009 and 31.01.2011 between the representatives of NEI, Schaeffler, SKF and Tata Bearing, and the evidence of numerous calls exchanged between them during the period from November 2009 to March 2011 which fact has not been denied by the parties, the Commission is of the view that it is evident that these parties had attended these two meetings regarding commercially sensitive price related information and had several telephonic discussions with the view to mutually determine the prices of bearings sold by them to the OEM customers during the period from at least November 2009 to January 2011.

The Commission notes that NEI and Tata Bearing have contended that the CDRs obtained by the DG cannot be relied upon as a Certificate under Section 65B of the Indian Evidence Act, 1872 has not been submitted in support thereof by the service providers Vodafone and Airtel. In this regard, it is noted that the representatives of the parties have themselves not denied the factum of telephonic communications with the competitors of the companies. Rather, some of them have confirmed that they used to interact telephonically with competitors' representatives. From such facts, seen holistically in light of the other corroborating evidences on record, the Commission opines that the factum of these conversations stands well established.

Thus, in the opinion of the Commission, "cartel" as defined under Section 2 (c) of the Act, stands established amongst the 4 parties viz. NEI, Schaeffler, SKF and Tata Bearing,

by way of meetings held on two occasions i.e. 03.11.2009 and 31.01.2011 wherein price revision along with minimum percentage of price increase to be quoted to the OEMs were discussed and also through telephonic discussions, brought out by the evidence on record.

As per Section 3 (3) of the Act, such agreements entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which (a) directly or indirectly determines purchase or sale prices; (b) limits or controls production, supply, markets, technical development, investment or provision of services; (c) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way; (d) directly or indirectly results in bid rigging or collusive bidding, shall be presumed to have an appreciable adverse effect on competition.

Thus, once cartel agreement between the parties is established by the evidence on record, as per Section 3 (3) of the Act, AAEC, in terms of the factors stated in Section 19 (3) of the Act, is presumed. Thus, the DG has, in its report, presuming AAEC to have been caused in the domestic automotive and industrial bearings market in India, concluded that the parties have contravened the provisions of Section 3 (3) (a) read with Section 3 (1) of the Act.

The Commission has examined the contentions urged by the parties with regard to AAEC. The Commission is of the opinion that the pleas taken by the parties in this regard are misconceived and not available to them either in fact or in law. A bare reading of the provisions of Section 3 (1) of the Act shows that these provisions not only proscribe the agreements which cause AAEC but the same also forbid the agreements which are likely to cause AAEC. Hence, the plea taken by the parties that there is no contravention of the provisions of the Act in the present matter because no AAEC has been caused as a result of the alleged cartel between the parties, is not tenable in law.

Therefore, in view of the Commission, since the parties have been unable to rebut the presumption of AAEC raised in the present matter, contravention of the provisions of Section 3 (3) (a) read with Section 3 (1) of the Act by these 4 parties viz. NEI, Schaeffler, SKF and Tata Bearing, as a result of their cartel arrangement reached through the meetings held on 03.11.2009 and 31.01.2011, stands established.

The Commission directs the Opposite Parties NEI, Schaeffler, SKF and Tata Bearing and their respective officials who have been held liable in terms of the provisions of Section 48 of the Act, to cease and desist in future from indulging in practices which have been found in the present order to be in contravention of the provisions of Section 3 of the Act, as detailed in the earlier part of the present order.

Regarding penalty, it is observed that in light of the peculiar facts and circumstances of the present case as detailed in this order, ends of justice would be met if the parties cease such cartel behaviour and desist from indulging in it in future, as directed earlier. The parties are however, cautioned to ensure that their future conduct is strictly in accord with the provisions of the Act, failing which any such future behaviour would be vied seriously with attendant consequences.

LW 55:07:2020**RH AGRO PRIVATE LTD v. STATE BANK OF INDIA & ORS [CCI]****Case No. 44 of 2019****A.K.Gupta, Sangeeta Verma & B.S.Bishnoi. [Decided on 14/05/2020]****Competition Act, 2002- sections 3 & 4- default by borrower- bank auctioned the security interest in public auction- borrower alleged collusion between the bank and the bidder- whether tenable to entertain the complaint- Held, No.****Brief facts:**

The Informant is stated to be a large scale basmati rice manufacturer situated at Bahalgarh, Sonapat. The total area of its manufacturing plant is 69121.25 sq. yard. The Informant submits that it was availing term loan and working capital from a consortium of banks namely, State Bank of India, State Bank of Patiala and Punjab National Bank. The present matter has arisen in regard to the process of auctioning of the Informant's property by State Bank of India, on account of its borrowing being classified as Non-Performing Asset (NPA).

Decision: Dismissed.**Reason:**

At the outset, the Commission notes that in the present case the Informant has made allegation of fraud and collusion between SBI officials and officials of Patanjali Group and M/s International Traders. The Informant has stated that the manufacturing plant at Sonapat, Haryana had been extended as primary security to the consortium of banks for availing term loan and working capital requirement of its business.

The Commission observes that the main contention of the Informant is that the bank officials have acted in collusion with buyers of the property in auction dated 07.09.2016. Also, when the auction was conducted, only two bidders participated in which Patanjali Ayurveda has put up EMD for M/s International Traders in order to create a smokescreen and assert transparency of bids in the auction. However, the Informant has not submitted any evidence in support of this allegation. The Informant further submitted that due to such conduct, there has been a denial of market access to other potential bidders and the bank officials who were in a dominant position have abused such position.

The Commission upon consideration of the material on record, opines that any bank under the provisions of SARFAESI Act has a right of enforcement of its security interest under the provisions of Section 13 of the said Act and if a borrower makes any default in repayment of a loan or any instalment thereof then his account is classifiable as a Non-Performing Asset (NPA) by the secured creditor. The main purpose behind provisions of the SARFAESI Act is to provide for banks and other financial institutions to auction residential or commercial properties (of Defaulter) to recover outstanding loan in the event of defaults by the borrower/guarantor. In the present case, it is seen that the SBI has conducted auction dated 07.09.2016 as One-time Settlement of the NPA and realized Rs.69,72,50,000/- from the sale of the primary security.

The Commission observes that the allegations of the Informant are mixed in nature, alleging collusive bidding and abuse of dominant position. It is pertinent to mention here that under the provisions of Section 3 of the Act, any agreement/ understanding/ practices between businesses is scrutinized in respect of entities 'engaged in identical or similar trade of goods or provision of services'. In the facts of the present case, SBI together with Patanjali Ayurveda (bidder) & M/s International Traders (bidder) cannot be said to be similarly placed or involved in the same line of business or horizontally placed so as to fall within Section 3(3) of the Act. Even otherwise, the conduct of a secured creditor in effecting sale of an asset secured to it, through an auction process cannot be examined under the provision of Section 3(3) (d) of the Act. Hence, analysis of conduct of SBI/OP-1 is not required in the present matter. However, the conduct of bidders Patanjali (OP-2) & International Trader (OP-3) may be liable to be examined under Section 3 (3)(d) of the Act, since they can be said to be horizontally placed in view of their individual interest in acquiring the Informant's plant, even if they may not be present in the same line of business.

As regards to the allegation of collusion between Patanjali and International Trader, the Commission notes that the Informant other than raising a suspicion that International Trader could have aided Patanjali in winning the bid, has not given any cogent document/evidence to enable the Commission to form a prima facie opinion warranting an investigation into the allegations. Further, SBI has sought to counter the allegations of suspected cover bidding by International Trader, in favour of Patanjali by stating that even a single bidder can be validly considered with respect to an auction conducted under the SARFAESI Act.

With respect to the allegation of abuse of dominant position by SBI under Section 4 of the Act, the Commission at the outset notes that SBI has sought to belie any allegation of abuse on its part and has detailed the efforts taken by it in conducting the auction several times in respect of the property mortgaged by the Informant. It was successful only on the 6th occasion. SBI has also said that the Informant did not raise any objection, in respect of the reserve price fixed by SBI, nor to the auction. Further, the allegations made by the Informant with regard to purported infirmities in auction process did not also find favour with the Debt Recovery Tribunal, Chandigarh empowered under SARFEASI Act to look into the matter. In such a scenario, it may not be germane to define a precise relevant market with respect to the auction processes in the present matter. Further, while effecting recovery of loan advanced, under the provisions of a law, neither the bank nor its officials can be said to be in a dominant position.

The Commission observes that a bank acting as per the remedies available to it under the SARFAESI Act for recovery cannot be termed as a dominant entity when it acts in accordance with provision thereof as it is acting in recovery of its funds/money in order to mitigate losses in such transaction (where account has been declared NPA). It is also noted that auction of primary security by a secured debtor for realization of funds cannot be said to be a transaction done in ordinary course of business. The sale of security of an account declared NPA is a remedy available to a secured creditor under the provisions of SARFAESI Act. Thus, the Commission is of the opinion that no competition concern can be said to have arisen in the present matter.

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FROM THE GOVERNMENT



- COMPANIES (REMOVAL OF NAMES OF COMPANIES FROM THE REGISTER OF COMPANIES) AMENDMENT RULES, 2020
- COMPANIES (APPOINTMENT AND QUALIFICATION OF DIRECTORS) THIRD AMENDMENT RULES, 2020
- COMPANIES (MEETINGS OF BOARD AND ITS POWERS) SECOND AMENDMENT RULES, 2020
- CLARIFICATION WITH REGARD TO CREATION OF DEPOSIT REPAYMENT RESERVE OF 20% U/S. 73 (2) (C) OF THE COMPANIES ACT 2013 AND TO INVEST OR DEPOSIT 15% OF AMOUNT OF DEBENTURES U/R. 18 OF COMPANIES (SHARE CAPITAL AND DEBENTURES) RULES 2014- COVID-19 -EXTENSION OF TIME.
- SCHEME FOR RELAXATION OF TIME FOR FILING FORMS RELATED TO CREATION OR MODIFICATION OF CHARGES UNDER THE COMPANIES ACT, 2013
- CLARIFICATION ON PASSING OF ORDINARY AND SPECIAL RESOLUTIONS BY COMPANIES UNDER THE COMPANIES ACT, 2013 READ WITH RULES MADE THEREUNDER ON ACCOUNT OF COVID-19 - EXTENSION OF TIME.
- COMPANIES (SHARE CAPITAL AND DEBENTURES) AMENDMENT RULES, 2020

- RELAXATION FROM COMPLIANCE TO REITS AND INVITS DUE TO THE COVID-19 VIRUS PANDEMIC– AMENDMENT
- COLLECTION OF STAMP DUTY ON ISSUE, TRANSFER AND SALE OF UNITS OF AIFS
- RELAXATION IN TIMELINES FOR COMPLIANCE WITH REGULATORY REQUIREMENTS
- 'GUIDELINES FOR PORTFOLIO MANAGERS' - EXTENSION OF IMPLEMENTATION TIMELINE
- RELAXATION OF TIME GAP BETWEEN TWO BOARD / AUDIT COMMITTEE MEETINGS OF LISTED ENTITIES OWING TO THE COVID-19 PANDEMIC
- FURTHER EXTENSION OF TIME FOR SUBMISSION OF ANNUAL SECRETARIAL COMPLIANCE REPORT BY LISTED ENTITIES DUE TO THE CONTINUING IMPACT OF THE COVID-19 PANDEMIC
- GUIDELINES FOR ORDER-TO-TRADE RATIO (OTR) FOR ALGORITHMIC TRADING
- FURTHER EXTENSION OF TIME FOR SUBMISSION OF FINANCIAL RESULTS FOR THE QUARTER/HALF YEAR/ FINANCIAL YEAR ENDING 31ST MARCH 2020 DUE TO THE CONTINUING IMPACT OF THE COVID-19 PANDEMIC
- TEMPORARY RELAXATION IN PROCESSING OF DOCUMENTS PERTAINING TO FPIS DUE TO COVID-19
- OPERATIONAL FRAMEWORK FOR TRANSACTIONS IN DEFAULTED DEBT SECURITIES POST MATURITY DATE/ REDEMPTION DATE UNDER PROVISIONS OF SEBI (ISSUE AND LISTING OF DEBT SECURITIES) REGULATIONS, 2008
- SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) (SECOND AMENDMENT) REGULATIONS, 2020
- SECURITIES AND EXCHANGE BOARD OF INDIA (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) (SECOND AMENDMENT) REGULATIONS, 2020
- CONDUCTING MEETING OF UNITHOLDERS OF INVITS AND REITS THROUGH VIDEO CONFERENCING (VC) OR THROUGH OTHER AUDIO-VISUAL MEANS (OAVM)
- RELAXATION IN TIMELINES FOR COMPLIANCE WITH REGULATORY REQUIREMENTS
- SECURITIES AND EXCHANGE BOARD OF INDIA (REAL ESTATE INVESTMENT TRUSTS) (SECOND AMENDMENT) REGULATIONS, 2020
- SECURITIES AND EXCHANGE BOARD OF INDIA (INFRASTRUCTURE INVESTMENT TRUSTS) (SECOND AMENDMENT) REGULATIONS, 2020
- SECURITIES AND EXCHANGE BOARD OF INDIA (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) (AMENDMENT) REGULATIONS, 2020
- SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2020
- INVESTMENT BY THE SPONSOR OR ASSET MANAGEMENT COMPANY IN THE SCHEME
- CLARIFICATIONS WITH RESPECT TO CIRCULAR DATED FEBRUARY 05, 2020 ON 'DISCLOSURE STANDARDS FOR ALTERNATIVE INVESTMENT FUNDS (AIFS)'
- RELAXATIONS FROM CERTAIN PROVISIONS OF THE SEBI (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2018 IN RESPECT OF FURTHER PUBLIC OFFER
- RELAXATION FROM COMPLIANCE WITH CERTAIN PROVISIONS OF THE SEBI (ISSUE AND LISTING OF DEBT SECURITIES) REGULATIONS, 2008, SEBI (NON - CONVERTIBLE REDEEMABLE PREFERENCE SHARES) REGULATIONS, 2013 AND OTHER SEBI CIRCULARS DUE TO THE COVID - 19 VIRUS PANDEMIC
- PARTICIPATION OF MUTUAL FUNDS IN COMMODITY DERIVATIVES MARKET IN INDIA
- FRAMEWORK FOR REGULATORY SANDBOX
- RELAXATION IN COMPLIANCE WITH REQUIREMENTS PERTAINING TO AIFS AND VCFS



Corporate Laws

01 Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2020

[Issued by the Ministry of Corporate Affairs Vide F. No. 1/28/2013-CL-V-Part dated 29.06.2020. To be published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-Section (ii)]

In exercise of the powers conferred by sub-sections (1), (2) and Sub-section (4) of section 248 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016, namely:-

1. (1) These rules may be called the Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2020.
- (2) They shall come into force with effect from their publication in the Official Gazette.
2. In the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 (hereafter referred to as the said rules) in rule 4, in sub-rule (3), in clause (i), the following proviso shall be inserted, namely:-
"Provided that in case of a -
 - (a) Government company in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments; or
 - (b) subsidiary of a Government company, referred to in clause (a), in which the entire paid up share capital is held by that Government company,

a duly notarised indemnity bond in Form STK-3A shall be given by an authorised representative, not below the rank of Under Secretary or its equivalent, in the administrative Ministry or Department of the Government of India or the State Government, as the case may be, on behalf of the company;"

3. In the said rules, in Form STK 2, in the list of attachments, in serial number 4, at the end, the words "or by an authorised representative of administrative Ministry/ Department in Form No. STK- 3A" shall be inserted.
4. In the said rules, after Form STK-3, the following Form shall be inserted, namely :-

"Form No. STK - 3A Indemnity Bond

(To be drawn on Stamp Paper of appropriate value)
(To be given by the Authorised Representative of the administrative Ministry/Department)

[Pursuant to the proviso to clause (i) of sub-rule (3) of rule 4 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016]

K. V. R. MURTY
Joint Secretary

Complete details are not published here for want of space. For complete details readers may log on to www.mca.gov.in

02 Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2020

[Issued by the Ministry of Corporate Affairs Vide F. No. 8/4/2018-CL-I- Part I dated 23.06.2020. Published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (ii)]

In exercise of the powers conferred by section 149 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Appointment and Qualification of Directors) Rules, 2014, namely:-

1. (1) These rules may be called the Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2020.
- (2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Companies (Appointment and Qualification of Directors) Rules, 2014, in rule 6, in sub-rule (1), in clause (a), for the words "seven months" the words "ten months" shall be substituted

K. V. R. MURTY
Joint Secretary

03 Companies (Meetings of Board and its Powers) Second Amendment Rules, 2020

[Issued by the Ministry of Corporate Affairs Vide F. No. 1/32/2013-CL-V-Part dated 23.06.2020. Published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (ii)]

In exercise of the powers conferred by sections 173, 177, 178 and section 186 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Meetings of Board and its Powers) Rules, 2014, namely:—

1. (1) These rules may be called the Companies (Meetings of Board and its Powers) Second Amendment Rules, 2020.
- (2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Companies (Meetings of Board and its Powers) Rules, 2014, in rule 4 in sub-rule (2), for the figures, letters

and word “30th June, 2020”, the figures, letters and word “30th September, 2020” shall be substituted.

K. V. R. MURTY
Joint Secretary

04 Clarification with regard to creation of deposit repayment reserve of 20% u/s. 73 (2) (C) of the Companies Act 2013 and to invest or deposit 15% of amount of debentures u/r.18 of Companies (Share capital and Debentures) Rules 2014- COVID-19 -Extension of time.

[Issued by the Ministry of Corporate Affairs Vide F. No. 02/08/2020-CL-V dated 19.06.2020. To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (ii)]

In continuation to General Circular No. 11/2020 dated 24th March 2020 and keeping in view the requests received from various stakeholders seeking extension of time for compliance of the subject requirements on account of COVID-19, it has been decided to further extend the time in respect of matters referred to in paras V, VI of the aforesaid circular, from 30th June 2020 to 30th September 2020. All other requirements shall remain unchanged.

2. This issues with the approval of the competent authority.

K.M.S. NARAYANAN
Assistant Director

05 Scheme for relaxation of time for filing forms related to creation or modification of charges under the Companies Act, 2013

[Issued by the Ministry of Corporate Affairs Vide F. No. 02/05/2020-CL-V dated 17.06.2020. To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (ii)]

The companies are required to file forms related to creation or modification of charges within the timelines provided in section 77 of the Companies Act, 2013 (Act), i.e. a total of 120 days of the creation or modification of charge. In case, the company fails to register the charge within the period of thirty days referred to in sub-section (1) of section 77, the charge holder may file the form related to creation or modification of charges under section 78 of the Act, within the overall timelines for filing of such form under section 77.

2. On account of the pandemic caused by the COVID-19, representations have been received in this Ministry, requesting that the timelines related to filing of certain charge related forms may be suitably relaxed so as to provide a window of compliance for the registration of charges. Under the Companies Fresh Start Scheme, 2020 as laid out in the General Circular No. 12/2020, dated 30.03.2020, the benefit of waiver of additional fees was not extended to the charge related documents. Therefore, it has been suggested that some dispensation may be provided for filing of charge related documents as well.

3. In view of the above, the Central Government in exercise of its powers under section 460 read with section 403

of the Act and the Companies (Registration Offices and Fees) Rules, 2014 (Fees Rules) has decided to introduce a Scheme, namely “**Scheme for relaxation of time for filing forms related to creation or modification of charges under the Companies Act, 2013**” for the purpose of condoning the delay in filing certain forms related to creation/modification of charges.

4. **The details of the scheme are as under: -**

(i) The scheme shall come into effect from the date of issue of this Circular.

(ii) **Applicability** : The scheme shall be applicable in respect of filing of Form No. CHG-1 and Form No. CHG-9 (both referred as ‘form’ or ‘forms’) by a company or a charge holder, where the date of creation/modification of charge:

(a) is before 01.03.2020, but the timeline for filing such form had not expired under section 77 of the Act as on 01.03.2020, or

(b) falls on any date between 01.03.2020 to 30.09.2020 (both dates inclusive).

(iii) **Relaxation of time:**

(a) In case a form is filed in respect of a situation covered under sub-para (ii)(a) above, the period beginning from 01.03.2020 and ending on 30.09.2020 shall not be reckoned for the purpose of counting the number of days under section 77 or section 78 of the Act. In case, the form is not filed within such period, the first day after 29.02.2020 shall be reckoned as 01.10.2020 for the purpose of counting the number of days within which the form is required to be filed under section 77 or section 78 of the Act.

(b) In case a form is filed in respect of a situation covered under sub-para (ii)(b) above, the period beginning from the date of creation/ modification of charge to 30.09.2020 shall not be reckoned for the purpose of counting of days under section 77 or section 78 of the Act. In case, the form is not filed within such period, The first day after the date of creation/modification of charge shall be reckoned as 01.10.2020 for the purpose of counting the number of days within which the form is required to be filed under section 77 or section 78 of the Act.

(iv) **Applicable Fees:**

(a) In regard to sub-para (iii)(a) above, if the form is filed on or before 30.09.2020, the fees payable as on 29.02.2020 under the Fees Rules for the said form shall be charged. If the form is filed thereafter, the applicable fees shall be charged under the Fees Rules after adding the number of days beginning from 01.10.2020 and ending on the date of filing plus the time period lapsed from the date of the creation of charge till 29.02.2020.

(b) In regard to sub-para (iii)(b) above, if the form is filed before 30.09.2020, normal fees shall be payable under the Fees Rules. If the form is filed thereafter, the first day after the date of creation/modification of charge shall be reckoned as 01.10.2020 and the number of days till the date of filing of the form shall be counted accordingly for the purposes of payment of fees under the Fees Rules.

(v) **The Scheme shall not apply, in case:**

- (a) The forms i.e. CHG-1 and CHG-9 had already been filed before the date of issue of this Circular.
- (b) The timeline for filing the form has already expired under section 77 or section 78 of the Act prior to 01.03.2020.
- (c) The timeline for filing the form expires at a future date, despite exclusion of the time provided in sub-para (iii) above.
- (d) Filing of Form CHG-4 for satisfaction of charges.

5. This issues with the approval of the Competent Authority.

K.M.S. NARAYANAN
Assistant Director

06 Clarification on passing of ordinary and special resolutions by companies under the Companies Act, 2013 read with rules made thereunder on account of COVID-19 - Extension of time.

[Issued by the Ministry of Corporate Affairs Vide F. No. 02/01/2020 CL-V dated 15.06.2020 To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (ii)]

This Ministry has issued General Circular No. 14/2020 on 8th April, 2020 and General Circular No. 17/2020 on 13th April, 2020 for providing clarifications on passing of ordinary and special resolutions by companies by holding extraordinary general meetings (EGMs) through video conferencing (VC) or other audio visual means (OAVM) or passing of certain items only through postal ballot without convening general meeting. The framework provided in the said Circulars allows companies to hold relevant EGMs or transact relevant business through postal ballots, as per procedure specified therein, upto 30th June, 2020 or till further orders, whichever is earlier. Requests have been received from the stakeholders for extending the period upto which the framework provided in the aforesaid Circulars may be utilized by the companies.

2. The matter has been examined and it has been decided to allow companies to conduct their EGMs through VC or OAVM or transact items through postal ballot in accordance with the framework provided in the aforesaid Circulars upto 30th September, 2020. All other requirements provided in the said Circulars remain unchanged.

3. This issues with the approval of the competent authority.

K.M.S. NARAYANAN
Assistant Director

07 Companies (Share Capital and Debentures) Amendment Rules, 2020

[Issued by the Ministry of Corporate Affairs Vide F. No. 01/04/2013-CL-V-Part-IV dated 05.06.2020. Published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-Section (ii)]

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 (Share Capital and Debentures) Rules, 2014, namely:—

1. Short title and commencement.-
 - (1) These rules may be called the **Companies (Share Capital and Debentures) Amendment Rules, 2020**.
 - (2) They shall come into force on the date of their publication in the official Gazette.
2. In the Companies (Share Capital and Debentures) Rules, 2014 (herein after referred to as the said rules), in rule 8, in sub-rule (4), in the second proviso,-
 - (i) for the letters, figures, brackets and words "GSR 180(E), dated 17th February, 2016 issued by the Department of Industrial Policy and Promotion", the letters, figures, brackets, and words "G.S.R. 127(E), dated the 19th February, 2019 issued by the Department for Promotion of Industry and Internal Trade" shall be substituted;
 - (ii) for the words "five years" the words, "ten years" shall be substituted.
3. In the said rules, in rule 18, in sub-rule (7), in clause (b), for sub-clause (v), following sub-clause shall be substituted, namely: -

"(v) In case a company is covered in item (A) of sub-clause (iii) of clause (b) or item (B) of sub-clause (iv) of clause (b), it shall on or before the 30th day of April in each year, in respect of debentures issued by such a company, invest or deposit, as the case may be, a sum which shall not be less than fifteen percent., of the amount of its debentures maturing during the year, ending on the 31st day of March of the next year in any one or more methods of investments or deposits as provided in sub-clause (vi):

Provided that the amount remaining invested or deposited, as the case may be, shall not any time fall below fifteen percent. of the amount of the debentures maturing during the year ending on 31st day of March of that year."

K.V. R. MURTY
Joint Secretary

08 Relaxation from compliance to REITs and InvITs due to the COVID-19 virus pandemic– Amendment

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/DDHS/DDHS/CIR/P/2020/114 dated 01.07.2020]

SEBI, vide circular No. SEBI / HO / DDHS / CIR / P / 2020/42 dated March 23, 2020, had granted temporary relaxations in compliance requirements for REITs and InvITs owing to the impact of the COVID-19 pandemic. Vide the circular, the due date for regulatory filings and compliances for REIT and InvIT for the period ending March 31, 2020 was extended by one month over and above the timelines, prescribed under SEBI (Infrastructure Investment Trusts) Regulations, 2014 (InvIT Regulations) and SEBI (Real estate Investment Trusts) Regulations, 2014 (REIT Regulations) and circulars issued thereunder.

- It has been decided to further extend the due date for regulatory filings and compliances for REIT and InvIT for the period ending March 31, 2020 by a month over and above the extended timelines specified vide the aforementioned circular.
- This Circular shall come into force with immediate effect. The Stock Exchanges are advised to bring the provisions of this circular to the notice of all REITs and InvITs and also disseminate on their websites.
- The 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 Regulation 33 of InvIT Regulations and Regulation 33 of REIT Regulations.
- This Circular is available on SEBI website at www.sebi.gov.in under the categories “Legal Framework” and under the drop down “Circulars”.

RICHA G. AGARWAL
Deputy General Manager

SANJAY SINGH BHATI
Deputy General Manager

09 Collection of stamp duty on issue, transfer and sale of units of AIFs

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/IMD/DF6/CIR/P/2020/113 dated 30.06.2020]

- Government vide Gazette notification S.O.116(E) dated January 08, 2020 has notified the “Registrars to an Issue and/or Share Transfer Agents” (RTA) registered under the Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 as a “depository” for the limited purposes of acting as a “collecting agent” under the Indian Stamp Act, 1899 and the Rules made thereunder, only in case of instruments of transaction otherwise than through a recognised stock exchange or depository.
- In this regard, you are directed to comply with the applicable provisions of the Indian Stamp Act, 1899 and the Rules made thereunder regarding collection of stamp duty on sale, transfer and issue of units of AIFs w.e.f. July 01, 2020.

- RTA already appointed by AIFs shall collect the stamp duty on issue, transfer and sale of units of AIFs as stated in Para (1) and (2) above.
- AIFs, where RTA have not been appointed so far, shall appoint RTA, at the earliest, but not later than July 15, 2020 to enable collection of applicable stamp duty on issue, transfer and sale of units of AIFs in compliance with the applicable provisions of the Indian Stamp Act, 1899 and the Rules made thereunder.
- As the provisions of the amended Indian Stamp Act, 1899 and the Rules made thereunder are to be implemented and enforced w.e.f. July 01, 2020, till such time RTA are appointed, as an interim measure, AIFs shall keep the applicable stamp duty on issue, transfer and sale of units of AIFs in a designated bank account. AIFs shall transfer the said amount to RTA upon appointment for onward remittance to States / Union Territories as per the provisions of Indian Stamp Act, 1899 and the Rules made thereunder.
- As regards transactions (issue, transfer and sale of units of AIFs in demat mode) through recognized Stock Exchange or Depository as defined under SCRA, 1956 and Depositories Act, 1996 respectively, the respective Stock Exchange/authorized Clearing Corporation or a Depository is already empowered to collect stamp duty as per the amended Indian Stamp Act, 1899 and the Rules made thereunder.
- 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.
- The circular is available on SEBI website at www.sebi.gov.in under the categories “Legal framework - Circulars” and “Info for - Alternative Investment Funds”.

10 Relaxation in timelines for compliance with regulatory requirements

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/MIRSD/DOP/CIR/P/2020/112 dated 30.06.2020]

- In view of the situation arising due to COVID-19 pandemic, lockdown imposed by the Government and representations received from the Depositories, SEBI had earlier provided relaxations in timelines for compliance with various regulatory requirements by the depository participants (DPs) / Registrars to an Issue & Share Transfer Agents (RTAs), vide circular nos. SEBI / HO / MIRSD / DOP / CIR/P/ 2020/ 62 dated April 16, 2020, and SEBI / HO / MIRSD / DOP / CIR/P / 2020 / 72 dated April 24, 2020.
- In view of the prevailing situation due to COVID-19 pandemic and representation received from the Depositories, it has been decided to further extend the timelines for compliance with the regulatory requirements by DPs / RTAs, mentioned in the SEBI circulars, as under:

Compliance requirements for which timelines were extended vide SEBI circular No. SEBI/HO/MIRSD/DOP/CIR/P/2020/62 dated April 16, 2020.	S.No.in circular for which timeline is extended further	Extended timeline / Period of exclusion
Processing of the demat request form by Issuer / RTA.	I	Period of exclusion shall be from March 23, 2020 till July 31, 2020.
Processing of the demat request form by the Participants.	II	A 15-day time period after July 31, 2020 is allowed to Depository / DPs, to clear the back log.
Compliance requirements for which timelines were extended vide SEBI circular No. SEBI/HO/MIRSD/DOP/CIR/P/2020/72 dated April 24, 2020.	S. No. in circular for which timeline is extended further	Extended timeline / Period of exclusion
Submission of half yearly Internal Audit Report (IAR) by DPs for half year ended on 31 st March 2020.	II	July 31, 2020, for half year ended on March 31, 2020.
Redressal of investor grievances.	III	Period of exclusion shall be from March 23, 2020 till July 31, 2020.
Transmission of securities.	IV	A 15-day time period after July 31, 2020 is allowed to Depository / DPs, to clear the back log.
Closure of demat account.	V	

- Vide circular no. SEBI/HO/MIRSD/DOP/CIR/P/2020/101 dated June 19, 2020, SEBI, *inter-alia*, extended the timeline for Reporting of Artificial Intelligence and Machine Learning by Trading Members (TM) / Clearing Members (CM) till July 31, 2020 for the quarter ended on March 31, 2020. In view of the representation received from the Stock Exchanges, the timeline for Reporting of Artificial Intelligence and Machine Learning by Trading Members (TM) / Clearing Members (CM) is extended till July 31, 2020 for the quarter ending on June 30, 2020.
- All other conditions specified in the aforementioned circulars shall continue to remain applicable.
- Stock Exchanges, Clearing Corporations and Depositories are directed to bring the provisions of this circular to the

notice of their members / participants and also disseminate the same on their websites.

- This circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992, and Section 19 of the Depositories Act, 1996 to protect the interests of investors in securities and to promote the development of, and to regulate the securities markets.

D RAJESH KUMAR
General Manager

11 'Guidelines for Portfolio Managers' - Extension of implementation timeline

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/111 dated 29.06.2020]

- In light of market events due to COVID-19 pandemic, SEBI, vide Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/57 dated March 30, 2020 extended, *inter alia*, the timeline for applicability of SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/26 dated February 13, 2020 on 'Guidelines for Portfolio Managers'.
- After taking into consideration requests received from portfolio managers and the prevailing business and market conditions, it has been decided to extend the timeline for compliance with the requirements of SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/26 dated February 13, 2020, by further three months. Accordingly, the provisions of said SEBI Circular shall be applicable with effect from October 01, 2020.
- This Circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 and shall come into force with immediate effect.
- This Circular is available on SEBI website at www.sebi.gov.in under the categories "Legal→Circulars" and "Info for – Portfolio Managers".

NAVEEN SHARMA
General Manager

12 Relaxation of time gap between two board / Audit Committee meetings of listed entities owing to the COVID-19 pandemic

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/CFD/CMD1/CIR/P/2020/110 dated 26.06.2020]

- SEBI, vide circular No. SEBI/HO/CFD/CMD1/CIR/P/2020/38 dated March 19, 2020, had relaxed the requirement of the maximum stipulated time gap of 120 days between two meetings of the board and Audit Committees of listed entities, as is required under Regulation 17(2) and 18(2)(a) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('**LODR Regulations**'). This relaxation was provided for the meetings held/proposed to be held between the period December 1, 2019 and June 30, 2020.

2. SEBI vide circular No. SEBI/HO/CFD/CMD1/CIR/P/2020/106 dated June 24, 2020 had extended the timeline for submission of financial results under Regulation 33 and 52 of the LODR Regulations, to July 31, 2020. SEBI is in receipt of requests from listed entities to extend the relaxation mentioned at para 1 above, till July 31, 2020.
3. After consideration, the relaxation of maximum time gap between two board/Audit Committee meetings as provided by circular No. SEBI/HO/CFD/CMD1/CIR/P/2020/38 dated March 19, 2020 is further extended till **July 31, 2020**. However, the board of directors and audit committees of listed entities shall ensure that they meet atleast four times a year, as stipulated under Regulations 17(2) and 18(2)(a) of the LODR Regulations.
4. This Circular shall come into force with immediate effect. The Stock Exchanges are advised to bring the provisions of this circular to the notice of all listed entities that have issued specified securities and also disseminate on their websites.
5. The 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 Regulation 101 of the LODR Regulations and is subject to the provisions of the Companies Act, 2013, rules made and circulars issued thereunder.
6. This Circular is available at www.sebi.gov.in under the link "Legal→Circulars".

PRADEEP RAMAKRISHNAN
General Manager

13 Further extension of time for submission of Annual Secretarial Compliance Report by listed entities due to the continuing impact of the COVID-19 pandemic

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/CFD/CMD1/CIR/P/2020/109 dated 25.06.2020]

1. SEBI, vide circular No. SEBI / HO / CFD / CMD1 / CIR/P/2020/38 dated March 19, 2020, had extended by one month (from May 31, 2020 to June 30, 2020), the timeline for submission of the Annual Secretarial Compliance (ASC) Report for the year 2019-2020, for listed entities.
2. SEBI has received representations from the Institute of Company Secretaries of India (ICSI), industry bodies and listed entities requesting extension of time for submission of the ASC Report in view of the difficulties and challenges faced by listed entities and Practicing Company Secretaries due to the continuing impact of the COVID-19 pandemic.
3. After consideration, it has been decided to further extend the timeline for submission of the ASC Report by one more month, to **July 31, 2020**.
4. This Circular shall come into force with immediate effect. The Stock Exchanges are advised to bring the provisions

of this circular to the notice of all listed entities that have issued specified securities and also disseminate on their websites.

5. The 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 Regulation 101 of the LODR Regulations.
6. This Circular is available at www.sebi.gov.in under the link "Legal→Circulars".

PRADEEP RAMAKRISHNAN
General Manager

14 Guidelines for Order-to-trade ratio (OTR) for Algorithmic Trading

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/MRD/DSAP/CIR/P/2020/107 dated 24.06.2020]

SEBI vide circulars no. CIR/MRD/DP/09/2012 dated March 30, 2012, CIR/MRD/DP/16/2013 dated May 21, 2013 and SEBI/HO/MRD/DP/CIR/P/2018/62 dated April 09, 2018, had advised stock exchanges to put in place effective economic disincentives for high daily order-to-trade ratio (OTR) of algo orders placed by trading members.

2. On the basis of request received from the stock exchange(s) the mechanism has been reviewed and the following modification shall be carried out in the existing OTR framework:
 - a. Stock exchanges may be permitted to introduce additional slabs upto OTR of 2000 (from existing OTR of 500), and for OTR more than 2000. Such slabs can be introduced with deterrent incremental penalty, which stock exchanges may decide jointly.
 - b. On the third instance of OTR being 2000 or more, in last 30 days (rolling basis), the concerned member shall not be permitted to place any orders for the first 15 minutes on the next trading day as a cooling off action.
3. The recognised stock exchanges may make necessary amendment to their existing byelaws, rules and/or regulations, wherever required.
4. 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.
5. This circular is available on SEBI website at www.sebi.gov.in at "Legal Framework→Circulars".

SANJAY PURAO
General Manager

15 Further extension of time for submission of financial results for the quarter/half year/ financial year ending 31st March 2020 due to the continuing impact of the COVID-19 pandemic

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/CFD/CMD1/CIR/P/2020/106 dated 24.06.2020]

- SEBI, vide circular No. SEBI/HO/CFD/CMD1/CIR/P/2020/38 dated March 19, 2020 and circular No. SEBI/HO/DDHS/ON/P/2020/41 dated March 23, 2020, had extended the timeline for submission of financial results under regulations 33 and 52 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('**LODR Regulations**') to June 30, 2020 (extension of one month) due to the impact of the COVID-19 pandemic.
- SEBI has received representations from listed entities, Chartered Accountant firms, and industry bodies/ associations seeking further extension of time for preparation, finalization and submission of financial results for listed entities for the quarter/half year/financial year ending 31st March 2020, due to many reasons, like the continuing lockdown, subsidiaries and associates situated in containment zones making the audit process challenging and other operational challenges due to the COVID-19 pandemic.
- After taking into consideration the aforementioned issues, it has been decided to further extend the timeline for submission of financial results under Regulation 33 of the LODR Regulations, by a month, to **July 31, 2020**, for the quarter and the year ending 31st March 2020. Similarly, the timeline under Regulation 52 of the LODR for submission of half yearly and/or annual financial results for the period ending March 31, 2020 for entities that have listed NCDs, NCRPS, CPs, MDS' is also extended to **July 31, 2020**.
- This Circular shall come into force with immediate effect. Stock Exchanges are advised to bring the provisions of this circular to the notice of all listed entities and also disseminate on their websites.
- The 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 Regulations 33, 52 and 101 of the LODR Regulations.
- This Circular is available at www.sebi.gov.in under the link "Legal→Circulars".

PRADEEP RAMAKRISHNAN
General Manager

16 Temporary relaxation in processing of documents pertaining to FPIs due to COVID-19

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/FPI&C/CIR/P/2020/104 dated 23.06.2020]

- SEBI vide Circular No. SEBI/HO/FPI&C/CIR/P/2020/056 dated March 30, 2020 had prescribed temporary

relaxation in processing of documents pertaining to FPIs due to COVID-19.

- In view of the prevailing situation due to COVID-19 pandemic and representations received from various stakeholders, it has been decided that the temporary relaxations shall be extended to August 31, 2020.
- All other terms and conditions specified in the aforesaid circular dated March 30, 2020 shall remain unchanged.
- This circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 and Sub-rule 14(i) of Rule 9 of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.
- A copy of this circular is available at the web page "Circulars" on our website www.sebi.gov.in
- DDPs & Custodians are requested to bring the contents of this circular to the notice of their FPI clients.

ACHAL SINGH
General Manager

17 Operational framework for transactions in defaulted debt securities post maturity date/ redemption date under provisions of SEBI (Issue and Listing of Debt Securities) Regulations, 2008

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/DDHS/CIR/P/103/2020 dated 23.06.2020]

- Representations have been received from market participants and investors to allow transactions in debt securities where redemption amount has not been paid on maturity/redemption date (referred as defaulted debt securities).
- After detailed consultation with various stakeholders including market participants, investors, Debenture Trustee(s), Stock Exchange(s), Depositories etc., it has been decided to introduce an operational framework for transactions in defaulted debt securities Accordingly, this circular outlines the operational framework for transactions in defaulted debt securities and also prescribes the obligations of Issuers, Debenture Trustee(s), Depositories and Stock Exchange(s) while permitting such transactions.
- The operational framework has been outlined in **Annexure A** and the same is also presented in a tabular form along-with timelines in **Annexure B**, for ease of reference.
- Issuers, Debenture Trustee(s), Stock Exchanges and Depositories are advised to:
 - comply with the obligations laid down in this circular including mechanism for inter-depository and exchange coordination, wherever required;

- 4.2. put in place necessary systems and infrastructure for implementation of this circular and complete the same by June 29, 2020.
5. The provisions of this circular shall come into force from July 01, 2020.
6. This circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 read with Regulation 31(1) of SEBI (Issue and Listing of Debt securities) Regulations, 2008, to protect the interests of investors in securities and to promote the development of, and to regulate the securities markets.
7. This Circular is available on SEBI website at www.sebi.gov.in under the categories "Legal Framework→Circulars".

RICHA G. AGARWAL
Deputy General Manager

Annexures not published here for want of space. For complete notification readers may log on to www.sebi.gov.in

18 Securities And Exchange Board Of India (Substantial Acquisition Of Shares And Takeovers) (Second Amendment) Regulations, 2020

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/LAD-NRO /GN/ 2020/19 dated 22.06.2020]

In exercise of the powers conferred under section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following Regulations to further amend the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, namely:-

1. These regulations may be called the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2020.
2. They shall come into force on the date of their publication in the Official Gazette.
3. In the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011,-
 - i. In regulation 10, the following new sub-regulation shall be inserted after sub-regulation (2A), namely –

“(2B) Any acquisition of shares or voting rights or control of the target company by way of preferential issue in compliance with regulation 164A of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 shall be exempt from the obligation to make an open offer under sub-regulation (1) of regulation 3 and regulation 4.

Explanation - The above exemption from open offer shall also apply to the target company with infrequently traded shares which is compliant with

the provisions of sub-regulations (2), (3), (4), (5),(6), (7) and (8) of regulation 164A of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018. The pricing of such infrequently traded shares shall be in terms of regulation 165 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018. ”

AJAY TYAGI
Chairman

19 Securities And Exchange Board Of India (Issue Of Capital And Disclosure Requirements) (Second Amendment) Regulations, 2020

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/LAD-NRO /GN/ 2020/18 dated 22.06.2020]

In exercise of the powers conferred under section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following Regulations to further amend the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, namely:-

1. These regulations may be called the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2020.
2. They shall come into force on the date of their publication in the Official Gazette.
3. In the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018,-
 - i. After regulation 164 the following new regulation shall be inserted, namely, -

“Pricing in preferential issue of shares of companies having stressed assets 164A.

- (1) In case of frequently traded shares, the price of the equity shares to be allotted pursuant to the preferential issue shall not be less than the average of the weekly high and low of the volume weighted average price of the related equity shares quoted on a recognised stock exchange during the two weeks preceding the relevant date.
- (2) No allotment of equity shares shall be made unless the issuer company meets any two of the following criteria:
 - a) the issuer has disclosed all the defaults relating to the payment of interest/ repayment of principal amount on loans from banks / financial institutions/ Systemically Important Non-Deposit taking Non-banking financial companies/ Deposit taking Non-banking financial companies and /or listed or unlisted debt securities in terms of SEBI Circular dated November 21, 2019 and such

payment default is continuing for a period of at least 90 calendar days after the occurrence of such default;

- b) there is an Inter-creditor agreement in terms of Reserve Bank of India (Prudential Framework for Resolution of Stressed Assets) Directions 2019 dated June 07, 2019;
 - c) the credit rating of the financial instruments (listed or unlisted), credit instruments / borrowings (listed or unlisted) of the listed company has been downgraded to "D".
- (3) The issuer company making the preferential issue shall ensure compliance with the following conditions:

- a) The preference issue shall be made to a person not part of the promoter or promoter group as on the date of the board meeting to consider the preferential issue. The preference issue shall not be made to the following entities:
 - (i) undischarged insolvent in terms of the Insolvency and Bankruptcy Code, 2016;
 - (ii) 'wilful defaulter' as per the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949;
 - (iii) a person disqualified to act as a director under the Companies Act, 2013; (iv) a person debarred from trading in securities or accessing the securities market by the Board;

Explanation: The restriction under (iv) shall not apply to the persons or entities mentioned therein who were debarred in the past by the Board and the period of debarment is already over as on the date of the board meeting considering the preferential issue.

- (v) a person declared as a fugitive economic offender;
- (vi) a person who has been convicted for any offence punishable with imprisonment-
 - A. For two years or more under any Act specified under the Twelfth Schedule of the Insolvency and Bankruptcy Code, 2016
 - B. For seven years or more under any law for the time being in force:

Provided that such restriction shall not be applicable to a person after the expiry of a period two years from the date of his release from imprisonment.

- (vii) A person who has executed a guarantee in favour of a lender of the issuer and such guarantee has been invoked by the lender and remains unpaid in full or part.
- (4) The resolution for the preferential issue and exemption from open offer shall provide for the following:
- a) The votes cast by the shareholders in the 'public' category in favour of the proposal shall be more than the number of votes cast against it. The proposed

allottee(s) in the preferential issue that already hold specified securities shall not be included in the category of 'public' for this purpose:

Provided that where the company does not have an identifiable promoter; the resolution shall be deemed to have been passed if the votes cast in favour are not less than three times the number of the votes, if any, cast against it.

- (5) The proceeds of such preferential issue shall not be used for any repayment of loans taken from promoters/ promoter group/ group companies. The proposed use of proceeds shall be disclosed in the explanatory statement sent for the purpose of the shareholder resolution.
- (6) a) The issuer shall make arrangements for monitoring the use of proceeds of the issue by a public financial institution or by a scheduled commercial bank, which is not a related party to the issuer:
 - (i) The monitoring agency shall submit its report to the issuer in the format specified in terms of Schedule XI (with fields as applicable) on a quarterly basis until atleast ninety five percent of the proceeds of the issue have been utilized.
 - (ii) The board of directors and the management of the issuer shall provide their comments on the findings of the monitoring agency as specified in Schedule XI.
 - (iii) The issuer shall, within forty five days from the end of each quarter, publicly disseminate the report of the monitoring agency by uploading the same on its website as well as submit the same to the stock exchange(s) on which the equity shares of the issuer are listed.
- b) The proceeds of the issue shall also be monitored by the Audit Committee till utilization of the proceeds.
- (7) The allotment made shall be locked-in for a period of three years from the last date of trading approval.
- (8) The statutory auditor and the audit committee shall certify that all conditions under sub-regulations (1), (2), (3), (4) and (5) of regulation 164A are met at the time of dispatch of notice for general meeting proposed for passing the special resolution and at the time of allotment."

AJAY TYAGI
Chairman

20 Conducting meeting of unitholders of InvITs and REITs through Video Conferencing (VC) or through other audio-visual means (OAVM)

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/DDHS/DDHS/CIR/P/2020/102 dated 22.06.2020]

1. Regulation 22(3)(a) of SEBI (Infrastructure Investment Trusts) Regulations, 2014 ("InvIT Regulations") *inter alia* provides for holding of an annual meeting of all unitholders of InvIT not less than once a year.
2. Regulation 22(3) of SEBI (Real Estate Investment Trusts) Regulations, 2014 ("REIT Regulations") *inter alia* provides

for holding of an annual meeting of all unitholders of REIT not less than once a year.

3. Further, meeting of unitholders are also required for matters which require approval of unitholders of InvITs/ REITs.
4. In this respect, representations have been received to allow InvITs/ REITs to conduct meeting of unitholders through Video Conferencing (VC) or through other audio-visual means (OAVM).
5. In this regard, it is clarified that InvITs/ REITs may conduct meeting of unitholders through VC or OAVM. InvITs/ REITs conducting such meetings through VC or OAVM shall follow the procedure specified in **Annexure I** of this circular.
6. The facility of VC or OAVM shall be available for annual meeting of unitholders in terms of Regulation 22(3) (a) of InvIT Regulations and Regulation 22(3) of REIT Regulations, to be conducted during calendar year 2020. For meetings, other than annual meeting of unitholders, the facility for conducting meeting of unitholders through VC or OAVM shall be available upto September 30, 2020.
7. The 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 Regulation 33 of InvIT Regulations and Regulation 33 of REIT Regulations.
8. This Circular is available on SEBI website at www.sebi.gov.in under the categories "Legal Framework" and under the drop down "Circulars".

SABIR VASANT SAWANT
Deputy General Manager

Annexure not published here for want of space. For complete notification readers may log on to www.sebi.gov.in

21 Relaxation in timelines for compliance with regulatory requirements

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/MIRSD/DOP/CIR/P/2020/101 dated 19.06.2020]

1. In view of the situation arising due to COVID-19 pandemic, lockdown imposed by the Government and representations received from Stock Exchanges, SEBI had earlier provided relaxations in timelines for compliance with various regulatory requirements by the trading members / clearing members / depository participants, vide circular nos. SEBI/HO/MIRSD/DOP/CIR/P/2020/61 dated April 16, 2020, SEBI/HO/MIRSD/DOP/CIR/P/2020/62 dated April 16, 2020, and SEBI/HO/MIRSD/DOP/CIR/P/2020/68 dated April 21, 2020. Later, vide circular no. SEBI/HO/MIRSD/DOP/CIR/P/2020/82 dated May 15, 2020, timelines / period of exclusion was further extended for certain compliance requirements.
2. In view of the prevailing situation due to COVID-19 pandemic and representations received from the Stock

Exchanges, it has been decided to further extend the timelines for compliance with the regulatory requirements by the Trading Members / Clearing Members / Depository Participants, mentioned in the SEBI circulars, as under:

Compliance requirements for which timelines were extended vide SEBI circular No. SEBI/HO/MIRSD/DOP/CIR/P/2020/61 dated April 16, 2020.	S. No. in circular for which timeline is extended further	Extended timeline / Period of exclusion
Client Funding Reporting	I	Till July 31, 2020 for the months of April, May and June 2020.
Reporting for Artificial Intelligence (AI) and Machine Learning (ML) applications.	II	Till July 31, 2020 for the quarter ended on March 31, 2020.
Compliance certificate for Margin Trading for CM Segment.	III	Till July 31, 2020.
Risk based supervision.	IV	
Internal Audit Report for half year ending (HYE) March 31, 2020.	V	Till July 31, 2020 for the half year ended on March 31, 2020.
Net worth certificate in Margin Trading for CM Segment for HYE March 31, 2020.	VIII	
Net worth certificate for all members for HYE March 2020.	IX	
Penalty for non-collection / short collection of upfront margins in cash segment.	X	Till July 31, 2020.
Maintaining call recordings of orders/ instructions received from clients.	XI	
Compliance requirements for which timelines were extended vide SEBI circular No. SEBI/HO/MIRSD/DOP/CIR/P/2020/62 dated April 16, 2020.	S. No. in circular for which timeline is extended further	Extended timeline / Period of exclusion
KYC application form and supporting documents of the clients to be uploaded on system of KRA within 10 working days.	III	Period of exclusion shall be from March 23, 2020 till July 31, 2020.

Compliance requirements for which timelines were extended vide SEBI circular No. SEBI/HO/MIRSD/DOP/CIR/P/2020/68 dated April 21, 2020.	S. No. in circular for which timeline is extended further	Extended timeline / Period of exclusion
Submission towards weekly monitoring of client funds under the provisions of Enhanced Supervision.	I	Till July 31, 2020.
Submission of data on monthly basis towards clients' and fund balance under the provisions of Enhanced Supervision.	II	
Daily margin trading reporting.	III	
Update in Income Tax Permanent Account Number of Key Management Personnel / Directors.	IV	Three months from the due date.
Issue of Annual Global Statement to clients.	V	

3. All other conditions specified in the aforementioned circulars shall continue to remain applicable.
4. Stock Exchanges, Clearing Corporations and Depositories are directed to bring the provisions of this circular to the notice of their members / participants and also disseminate the same on their websites.
5. This circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992, and Section 19 of the Depositories Act, 1996 to protect the interests of investors in securities and to promote the development of, and to regulate the securities markets.

D RAJESH KUMAR
General Manager

22 Securities And Exchange Board Of India (Real Estate Investment Trusts) (Second Amendment) Regulations, 2020

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/LAD-NRO/GN/2020/16 dated 16.06.2020]

In exercise of the powers conferred under section 30 read with sections 11 and 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following regulations to further amend the Securities and Exchange Board of India (Real Estate Investment Trusts) Regulations, 2014, namely :-

1. These regulations may be called the Securities and Exchange Board of India (Real Estate Investment Trusts) (Second Amendment) Regulations, 2020.
2. They shall come into force on the date of their publication in the Official Gazette.

3. In the Securities and Exchange Board of India (Real Estate Investment Trusts) Regulations, 2014,-

- I. In regulation 2, in sub-regulation (1),-
 - a. after clause (qa), a new clause (qaa) shall be inserted, namely,-

“qaa) “inducted sponsor” means any person who has been inducted as a sponsor in accordance with sub-regulation (8) of regulation 22.”
 - b. in clause (zc), the words and symbols “re-designated” shall be substituted with the word “inducted”.
 - c. clause (zl) shall be omitted.
 - d. in clause (zt), the words “and shall include an inducted sponsor;” shall be inserted after the word “Board”.
 - e. in clause (ztb), following new sub-clauses shall be inserted after sub-clause (e), namely,-

“f. an insurance company registered with the Insurance Regulatory and Development Authority of India;

g. a mutual fund.”

II. After regulation 7, the following new regulation shall be inserted, namely,-

“De-classification of the status of sponsor

7A (1) De-classification of the status of a sponsor(s) of a REIT whose units have been listed on the stock exchanges for a period of three years shall be permitted upon receipt of an application from the REIT and subject to compliance with the following conditions:

- (a) The unit holding of such sponsor and its associates taken together does not exceed 10% of the outstanding units of the REIT;
- (b) The manager of the REIT is not an entity controlled by such sponsor or its associates;
- (c) The sponsor or its associates are not fugitive economic offender;
- (d) Approval of unit holders has been obtained in accordance with sub-regulation 5 of Regulation 22.”

III. In regulation 11,-

- a. in sub-regulation (3), clause (b) and clause (c) shall be omitted.
- b. sub-regulation (4) shall be omitted.
- c. sub-regulation (5) shall be omitted.

- IV. In regulation 14, in sub-regulation (2), a new clause shall be inserted after clause (ba), namely,-

“(bb) maximum subscription from any investor other than sponsor(s), its related parties and its associates shall not be more than 25 percent of the total unit capital;”

- V. In regulation 22,-

- a. in sub-regulation (5), after clause (f), a new clause shall be inserted, namely,- “(fa) de-classification of the status of sponsor;”
- b. in sub-regulation (6), clause (d) shall be omitted.
- c. in sub-regulation (6), the proviso under clause (g) shall be omitted.
- d. after sub-regulation (6), the following new sub-regulation shall be inserted, namely,-

“(6A) No person, other than sponsor(s), its related parties and its associates, shall acquire units of a REIT which taken together with units held by him and by persons acting in concert with him in such REIT, exceeds twenty-five per cent of the value of outstanding REIT units unless approval from seventy five per cent. of the unit holders by value excluding the value of units held by parties related to the transaction, is obtained:

Provided that if the required approval is not received, the person acquiring the units shall provide an exit option to the dissenting unit holders to the extent and in the manner as may be specified by the Board.”

- e. in sub-regulation (8),
 - i. for the words and symbols “re-designated” ,wherever it occurs, the word “inducted” shall be substituted.
 - ii. clause (a) shall be substituted with the following, namely.-

“(a) prior to such changes, approval from seventy-five per cent of the unit holders by value excluding the value of units held by parties related to the transaction shall be obtained;”
 - iii. in clause b, in sub-clause (i), the words “who proposes to buy the units” shall be omitted and the words and symbols “in the manner specified by the Board;” shall be inserted after the word “units”.
 - iv. in clause (b), sub-clause (ii) shall be substituted with the following, namely,-

“(ii) in case of change in control of the sponsor or inducted sponsor, the said sponsor or inducted sponsor shall provide the dissenting unit holders an option to exit by buying their units in the manner as specified by the Board;

Explanation: Change in sponsor or inducted sponsor shall mean any change due to entry of a new sponsor with or without exit of an existing sponsor.”

AJAY TYAGI
Chairman

23 Securities And Exchange Board Of India (Infrastructure Investment Trusts) (Second Amendment) Regulations, 2020

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/LAD-NRO/GN/2020/15 dated 16.06.2020]

In exercise of the powers conferred under section 30 read with sections 11 and 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following regulations to further amend the Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations, 2014, namely :-

1. These regulations may be called the Securities and Exchange Board of India (Infrastructure Investment Trusts) (Second Amendment) Regulations, 2020.
2. They shall come into force on the date of their publication in the Official Gazette.
3. In the Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations, 2014,-
 - I. In regulation 2, in sub-regulation 1,-
 - a. after clause (sa), the following a new clause shall be inserted, namely,-

“(sb) “inducted sponsor” means any company or LLP or body corporate which has been inducted as a sponsor in accordance with sub-regulation (7) of regulation 22”
 - b. in clause (zz), the words “and shall include an inducted sponsor” shall be inserted after the word “Board”.
 - c. in clause (zza), the following new sub-clauses shall be inserted after sub-clause (e), namely,-
 - “f. an insurance company registered with the Insurance Regulatory and Development Authority of India;
 - g. a mutual fund.”
 - II. After regulation 7, the following new regulation shall be inserted, namely,-

“De-classification of the status of sponsor

7A (1) De-classification of the status of a sponsor(s) of an InvIT whose units have been listed on the stock exchanges for a period of three years shall be permitted upon receipt of an application from the InvIT and subject to compliance with the following conditions:

- (a) The unit holding of such sponsor and its associates taken together does not exceed 10% of the outstanding units of the InvIT;
- (b) The investment manager of the InvIT is not an entity controlled by such sponsor or its associates;
- (c) Approval of unit holders has been obtained in accordance with sub-regulation 4 of Regulation 22.”
- III. In regulation 14,-
- a. in sub-regulation (2), after clause (d), the following new clause shall be inserted, namely,-
- “(da) maximum subscription from any investor other than sponsor(s), its related parties and its associates, in initial offer shall not be more than 25 percent of the total unit capital;”
- b. in sub-regulation (4), after clause (c), the following new clause shall be inserted, namely,-
- “(ca) maximum subscription from any investor other than sponsor(s), its related parties and its associates, in initial offer shall not be more than 25 percent of the total unit capital;”
- IV. In regulation 16,-
- a. in sub-regulation 7, in clause (a), the words and symbols “,each holding not more than twenty five per cent. of the units of the InvIT” shall be omitted.
- b. in sub-regulation 7, in clause (b), the words and symbols “,each holding not more than twenty five per cent. of the units of the InvIT” shall be omitted.
- V. In regulation 22,-
- a. in sub-regulation (4), after clause (f), a new clause shall be inserted, namely,-
- “(fa) de-classification of the status of sponsor;”
- b. in sub-regulation (5), the proviso under clause (f) shall be omitted.
- c. after sub-regulation (5B), the following new sub-regulation shall be inserted, namely,-
- “(5C) No person, other than sponsor(s), its related parties and its associates, shall acquire units of an InvIT which taken together with units held by such person and by persons acting in concert with such person in such InvIT, exceeds twenty-five per cent of the value of outstanding InvIT units unless approval from seventy five per cent. of the unit holders by value excluding the value of units held by parties related to the transaction, is obtained:

Provided that if the required approval is not received, the person acquiring the units shall provide an exit option to the dissenting unit holders to the extent and in the manner as may be specified by the Board.”

- d. after sub-regulation (6), the following new sub-regulation shall be inserted, namely,-

“(7) In case of any change in sponsor or inducted sponsor or change in control of sponsor or inducted sponsor, -

- (a) prior to such change, approval from seventy five per cent. of the unit holders by value excluding the value of units held by parties related to the transaction shall be obtained
- (b) if the required approval is not received,-
- (i) in case of change of sponsor or inducted sponsor, the proposed inducted sponsor shall provide the dissenting unit holders an option to exit by buying their units in the manner specified by the Board;

said sponsor or inducted sponsor shall provide the dissenting unit holders an option to exit by buying their units in the manner specified by the Board;

Explanation: Change in sponsor or inducted sponsor shall mean any change due to entry of a new sponsor with or without exit of an existing sponsor.”

AJAY TYAGI
Chairman

24 Securities And Exchange Board Of India (Issue Of Capital And Disclosure Requirements) (Amendment) Regulations, 2020

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/LAD-NRO/GN/2020/17 dated 16.06.2020]

In exercise of the powers conferred under section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following Regulations to further amend the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, namely :-

1. These regulations may be called the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2020.
2. They shall come into force on the date of their publication in the Official Gazette.
3. In the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018,-

- I. in regulation 172, in sub-regulation (3) for the words “six months” the words “two weeks” shall be substituted.

AJAY TYAGI
Chairman

25 Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2020

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/LAD-NRO/GN/2020/14 dated 16.06.2020]

In exercise of the powers conferred under section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following Regulations to further amend the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, namely:-

1. These regulations may be called the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2020.
2. They shall come into force on the date of their publication in the Official Gazette.
3. In the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2020,-
 - I. In regulation 3, in sub-regulation (2), the following new proviso shall be inserted before the existing provisos, namely –

“Provided that the acquisition beyond five per cent but upto ten per cent of the voting rights in the target company shall be permitted for the financial year 2020-21 only in respect of acquisition by a promoter pursuant to preferential issue of equity shares by the target company.”
 - II. In regulation 6, in sub-regulation (1), the following shall be inserted after the first proviso, namely,-

“The relaxation from the first proviso is granted till March 31, 2021.”

AJAY TYAGI
Chairman

26 Investment by the sponsor or asset management company in the scheme

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/IMD/DF4/CIR/P/2020/100 dated 12.06.2020]

1. In terms of Regulation 28 (4) of SEBI (Mutual Funds) (Amendment) Regulations, 2020, the sponsor or asset management company is required to invest not less than one percent of the amount which would be raised in the new fund offer or fifty lakh rupees, whichever is less in such option of the scheme, as may be specified by the Board.

2. In this regard, it has been decided that the above referred investment shall be made in growth option of the scheme. For such schemes where growth option is not available the investment shall be made in the dividend reinvestment option of the scheme. Further, for such schemes where growth option as well as dividend reinvestment option are not available the investment shall be made in the dividend option of the scheme.
3. This Circular shall come into force with immediate effect.
4. This circular is issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992, read with the provisions of Regulation 77 of SEBI (Mutual Funds) Regulations, 1996, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

LAMBER SINGH
Deputy General Manager

27 Clarifications with respect to Circular dated February 05, 2020 on ‘Disclosure Standards for Alternative Investment Funds (AIFs)’

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/IMD/DF6/CIR/P/2020/99 dated 12.06.2020]

1. SEBI has issued a Circular No. SEBI/HO/IMD/DF6/CIR/P/2020/24 (“Circular”) dated February 05, 2020 on ‘Disclosure Standards for Alternative Investment Funds (AIFs)’.
2. In this regard, it is clarified as under:
 - (i) Audit of compliance with terms of PPM as provided in Paragraph 5 of the Circular, shall be conducted at the end of each Financial Year and the findings of audit along with corrective steps, if any, shall be communicated to the Trustee or Board or Designated Partners of the AIF, Board of the Manager and SEBI, within 6 months from the end of the Financial Year.
 - (ii) The requirement of audit of compliance with terms of PPM shall not apply to AIFs which have not raised any funds from their investors. However, such AIFs shall submit a Certificate from a Chartered Accountant to the effect that no funds have been raised, within 6 months from the end of the Financial Year.
 - (iii) For the Financial Year 2019-20, the above requirements shall be fulfilled on or before December 31, 2020.
3. Paragraph 12 (i) of the Circular is amended as under:

“Any association of AIFs (“Association”), which in terms of membership, represents at least 33% of the number of AIFs, may notify one or more Benchmarking Agencies, with whom each AIF shall enter into an agreement for carrying out the benchmarking process.”
4. In light of market events due to the COVID-19 pandemic, the timeline for making available the first industry benchmark and AIF level performance versus Benchmark Reports, is extended till October 01, 2020.

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. The circular is available on SEBI website at www.sebi.gov.in under the categories "Legal framework - Circulars" and "Info for - Alternative Investment Funds".

SANJAY SINGH BHATI
Deputy General Manager

28 Relaxations from certain provisions of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 in respect of Further Public Offer

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/CFD/CIR/CFD/DIL/85/2020 dated 09.06.2020]

1. In the wake of developments relating to the COVID-19 pandemic, SEBI vide Circular no. SEBI/HO/CFD/CIR/CFD/DIL/67/2020 dated April 21, 2020 introduced temporary relaxation in eligibility conditions related to Fast Track Rights Issue.
2. In continuation, it has been decided to provide similar relaxations in the eligibility conditions related to Fast Track Further Public Offer (FPO) as contained in the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 ("**ICDR Regulations**") as follows:

Sub-regulations (1), (2), (3), (4) and (5) and (9) of regulation 123 shall not apply if the issuer satisfies the conditions mentioned under Regulation 155 of ICDR Regulations for making a further public offer through the fast track route:

Certain temporary relaxations with respect to Regulation 155 of ICDR Regulations are extended as follows:

- (i) In regulation 155(c) the words 'one thousand crore' shall be read as 'five hundred crore'
- (ii) Regulation 155(h) shall be read as under:

"no show-cause notices, excluding under adjudication proceedings, have been issued by the Board and pending against the issuer or its promoters or whole-time directors as on the reference date;

In cases where against the issuer or its promoters/ directors/ group companies,

- i) *a show cause notice(s) has been issued by the Board in an adjudication proceeding or*
- ii) *prosecution proceedings have been initiated by the Board;*

necessary disclosures in respect of such action (s) along-with its potential adverse impact on the issuer shall be made in the offer documents."

(iii) Regulation 155(i) shall be read as "*the issuer or promoter or promoter group or director of the issuer has fulfilled the settlement terms or adhered to directions of the settlement order(s) in cases where it has settled any alleged violation of securities laws through the consent or settlement mechanism with the Board*"

(iv) Regulation 155 (l) shall be read as "*impact of audit qualifications, if any and where quantifiable, on the audited accounts of the issuer in respect of those financial years for which such accounts are disclosed, shall be appropriately disclosed and accounts accordingly restated, in the offer documents.*

Further, that for the qualifications wherein impact on the financials cannot be ascertained the same shall be disclosed appropriately in the offer documents."

3. These temporary relaxations are applicable for FPOs that open on or before March 31, 2021.
4. The relaxations mentioned in this circular are not applicable for issuance of warrants.
5. This circular shall come into force with immediate effect. The Stock Exchanges are advised to bring the provisions of this circular to the notice of all entities who have listed their equity and convertible securities.
6. The circular is issued in exercise of the powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992.
7. The circular is available on SEBI website at www.sebi.gov.in under the category - 'Legal Circulars'.

JEEVAN SONPAROTE
Chief General Manager

29 Relaxation from compliance with certain provisions of the SEBI (Issue and Listing of Debt Securities) Regulations, 2008, SEBI (Non-Convertible Redeemable Preference Shares) Regulations, 2013 and other SEBI Circulars due to the COVID -19 virus pandemic

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/DDHS/CIR/P/2020/098 dated 08.06.2020]

1. SEBI vide circular no. SEBI/HO/DDHS/ON/P/2020/41 dated March 23, 2020 specified guidelines for relaxation from compliance with certain provisions of the SEBI LODR Regulations and other SEBI Circulars due to the COVID -19 virus pandemic.
2. In partial amendment to the aforesaid circular, it has been decided to extend the relaxation provided in the circular for issuers who intend/propose to list their Non- Convertible

Debentures (NCDs) /Non-Convertible Redeemable Preference Share (NCRPS) /Commercial Papers (CPs) for disclosure of financial results for another one month.

3. Accordingly, Clause 5 of the circular stands modified as under:

"In order to enable listed issuers who intend/propose to list their NCD/NCRPS/CPs, it has been decided to grant the following relaxations in timelines:

Particulars	Available Financials	Date for issuance	Extended date for issuance	Period of relaxation
Cut-off date for issuance of NCDs/ NCRPS / CPs	As on September 30, 2019	On or before March 31, 2020	On or before June 30, 2020	91 days

4. This circular shall come into force with immediate effect. The Stock Exchanges are advised to bring the provisions of this circular to the notice of all listed entities and also disseminate on their websites.
5. The 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 Regulations 31 and 32 of the SEBI (ILDS) Regulations, 2008, Regulations 26 and 27 of SEBI (NCRPS) Regulations, 2013, the relaxations contained herein are subject to the provisions of the Companies Act, 2013 and rules made thereunder.
6. The circular is available on SEBI website at www.sebi.gov.in under the category - 'Legal -Circulars'

RICHA G. AGARWAL
Deputy General Manager

30 Participation of Mutual Funds in Commodity Derivatives Market in India

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/IMD/DF2/CIR/P/2020/96 dated 05.06.2020]

1. In partial modification to SEBI Circular No. SEBI/HO/IMD/DF2/CIR/P/2019/65 dated May 21, 2019, paragraph 3(iii) regarding holding of physical goods by mutual fund schemes, is modified as under:

"3(iii) No Mutual fund schemes shall invest in physical goods except in 'gold' through Gold ETFs. However, as mutual fund schemes participating in ETCDs may hold the underlying goods in case of physical settlement of contracts, in that case mutual funds shall dispose of such goods from the books of the scheme, at the earliest, not exceeding the timeline prescribed below: -

- a) For Gold and Silver: - 180 days from the date of holding of physical goods,
- b) For other goods (except for Gold and Silver):
- 1) By the immediate next expiry day of the same contract series of the said commodity.
 - 2) However, if Final Expiry Date (FED) of the goods falls before the immediate next expiry day of the same contract series of the said commodity, then within 30 days from the date of holding of physical goods."

All other conditions in the aforesaid circular shall remain unchanged.

2. This circular is issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992, read with the provisions of Regulation 77 of SEBI (Mutual Funds) Regulations, 1996, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

HRUDA RANJAN SAHOO
Deputy General Manager

31 Framework for Regulatory Sandbox

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/MRD-1/CIR/P/2020/95 dated 05.06.2020]

1. Participants in the capital market in India have been early adopters of technology. SEBI believes that encouraging adoption and usage of financial technologies ('FinTech') can act as an instrument to further develop and maintain an efficient, fair and transparent securities market ecosystem.
2. Towards this end, SEBI vide circular SEBI/HO/MRD/2019/P/64 dated May 20, 2019, stipulated a framework for an industry-wide Innovation Sandbox, whereby FinTech startups and entities not regulated by SEBI were permitted to use the Innovation Sandbox for offline testing of their proposed solution.
3. Further, SEBI now has decided to introduce a framework for "Regulatory Sandbox". Under this sandbox framework, entities regulated by SEBI shall be granted certain facilities and flexibilities to experiment with FinTech solutions in a live environment and on limited set of real customers for a limited time frame. These features shall be fortified with necessary safeguards for investor protection and risk mitigation.
4. The guidelines pertaining to the functioning of the Regulatory Sandbox are provided at Annexure A.

This circular is being issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 and Section 19 of the Depositories Act, 1996 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

BITHIN MAHANTA
Deputy General Manager

Annexures not published here for want of space. For complete notification readers may log on to www.sebi.gov.in

32 Relaxation in compliance with requirements pertaining to AIFs and VCFs

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/IMD/DF6/CIR/P/2020/92 dated 04.06.2020]

1. In light of market events due to COVID-19 pandemic, SEBI, vide Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/58, dated March 30, 2020, extended the due date for

regulatory filings for AIFs and VCFs for the periods ending March 31, 2020 and April 30, 2020.

2. A need has been felt to further extend the timelines for regulatory filings for AIFs and VCFs.
3. Accordingly, AIFs and VCFs may submit the regulatory filings for the months ending March, April, May and June 2020, as applicable, on or before August 07, 2020.
4. This Circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 and shall come into force with immediate effect.
5. This Circular is available on SEBI website at www.sebi.gov.in under the categories "Legal Framework" and under the drop down "Circulars" and "Info for - Alternative Investment Funds".

SANJAY SINGH BHATI
Deputy General Manager



**THE INSTITUTE OF
Company Secretaries of India**
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

CORPORATE SEVA KENDRA

Ministry of Corporate Affairs

New Help Desk Number from 17th July, 2020

Ph: 0120-4832500

For any query related to
Company Name Availability and Company Incorporation,
please contact **CRC Helpdesk : 0120-4832500**
Email: CRC.Escalation@mca.gov.in





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Vision

"To be a global leader in promoting good corporate governance"

Motto

सत्यं वद। धर्मं चर। कृत्स्नं कृतं त्रुष्टिः कर्तव्यं तु कृतं इव।

Mission

"To develop high calibre professionals facilitating good corporate governance"

Dear Professional Colleague,

The Institute in alignment with its vision "To be global leader in promoting good Corporate Governance", is stepping towards globalization of the profession of Company Secretaries and advancement of global footprint of the Institute.

The Institute has already made its presence felt in USA and Dubai covering MENA region through its ICSI Overseas Centre, USA and ICSI Middle East (DIFC) NPIO respectively. The contact details of same are available at <https://tinyurl.com/vl3vwcs> and <https://tinyurl.com/tne4qvv>.

On the same lines, the Institute is exploring to expand its base in various continents across the globe. As per Guidelines for Establishing and Functioning of ICSI Overseas Centre(s), 2019, an ICSI Overseas Centre can be set up in any foreign country provided there are 25 or more members having their professional address in that country and a request for setting up of a Centre has been received from at least 7 members residing or having professional address in such jurisdiction. The said Guidelines are available on the ICSI website at <https://tinyurl.com/w858w63>.

The Institute is in process of opening new ICSI Overseas Centre(s) at various countries particularly at Australia, Canada and Singapore which will act as Facilitation Centre of the Institute. The Institute seeks expressions of interest in attached format from you for the same.

In view of the same, the members having address outside India are requested to update their professional address in ICSI records. For change of address kindly visit the link <https://tinyurl.com/uf4df6b>.

Also, the Members whose membership fee is outstanding may write to the Directorate of Membership of the Institute at member@icsi.edu and get their membership restored.

Look forward to your kind cooperation.

Thanking You,

(CS Ashish Garg)

President

(CS Ranjeet Pandey)

Chairman
International Affairs Committee

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Date: _____

Expression of Interest to set up an ICSI Overseas Centre at _____ (name of Country)

This is to request for setting up of an ICSI Overseas Centre at _____ (name of Country) in accordance with Guidelines for establishing and functioning of ICSI Overseas Centre(s) 2019 as amended by the ICSI Council in its 265th meeting held on November 17, 2019 at Jaipur.

I confirm that:

- I am a member of the Institute of Company Secretaries of India having paid the membership fee and there are no dues as on date.
- No criminal case is pending or has been held guilty in the past.
- Has not been held Guilty under the Company Secretaries Act,1980 in last six years by the Disciplinary Committee/ Board Of Discipline.
- Not been declared insolvent by Competent Authority.

Yours faithfully,

(Signature)

Name: _____

FCS / ACS No: . _____

Email: _____

Mobile No: _____

Address: _____

(You are requested to send duly signed this form by email at overseas@icsi.edu)

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PCS DAY CELEBRATIONS HELD ON 15TH JUNE, 2020

PCS Day celebrations were successfully conducted on 15th June, 2020 in the virtual mode. The proceedings of the programme were witnessed by more than 45000 members and students from different parts of country and professionals from abroad as well as dignitaries and distinguished invitees.

INAUGURAL SESSION



The Day was inaugurated by the Chief Guest Shri Anurag Singh Thakur, Hon'ble Minister of State for Finance and Corporate Affairs. CS Deepak Kumar Khaitan, Council Member and Chairman, PCS Committee, ICSI introduced the Chief Guest and extended wishes to all the members and taking pride in hard work associated with creating brand "ICSI".

CS Ashish Garg, President ICSI, delivered the Presidential Address and acknowledged the efforts of his predecessors in achieving the first milestone for the Practising Company Secretaries, i.e., Signing of Annual Return on 15th June, 1988. While reiterating excerpts from the address of Prime Minister Shri Narendra Modi and President Shri Ram Nath Kovind, he said that these are the testimonials of the crucial role that the Company Secretary plays in the corporate world.

Shri Anurag Singh Thakur while delivering his address commended the efforts of the ICSI in gaining grounds not only in the country but also internationally. He recognized the role of the Institute in the Corporate Secretaries International Association. He further added that the government is taking all the measures and initiatives to make India an investment hub and it is up to the professionals to take advantage of the same, since more investment would mean enhanced demand for Company Secretaries. The Hon'ble Minister appreciated not only the professionalism of the members but also appreciated the zeal for change in society driven by the Institute through participating in various initiatives of the government such as Fit India movement, Swachh Bharat Abhiyan. He encouraged the coming forward of the members in the fight against COVID-19. He further suggested that the Institute needs to follow the principle of three E's Education, Employment, Empowerment, this shall lead to growth of the profession both nationally and internationally.

CS Devendra Deshpande, Council Member, ICSI facilitated the awarding of Certificates to the candidates for various capacity building programmes and crash courses at the hands of the Chief Guest.

CS Nagendra D. Rao, Vice President, ICSI while proposing a Vote of thanks to the Minister assured that all the members shall wholeheartedly work towards self reliant economy and new India.

SPECIAL INTERACTIVE SESSION WITH SHRI MANOJ PANDEY, JOINT SECRETARY, MINISTRY OF CORPORATE AFFAIRS

Welcome Address: CS Nagendra D. Rao, Vice President, ICSI

Guest: Shri Manoj Pandey, Joint Secretary, MCA and Govt. Nominee on the Council of ICSI

Council Members: CS Manish Gupta and CS Praveen Soni.

Shri Manoj Pandey, humbly remarked that the credit of efficient functioning of the CRC, Manesar goes to the officers and the Company Secretaries who have been working day and night towards the success of the system. Remarking that a true professional is one who works ethically, he advised all the company secretaries to take pledge to work ethically and honestly. He further said that the Company Secretaries are expected to facilitate the interpretation of law and give feedback to regulators, so that the better regulations can be made to adjust to the requirement of the society. He complimented the company secretaries for continued performance in the turbulent times. He said that the company secretaries should be prepared to accept the change and lead the way, for example he said facilitating digitization, guiding the startups to stay digital, thinking out of box, assuming new roles etc. He encouraged members to reinvent themselves, embrace new technology, and move beyond Company Law.

CS Praveen Soni along with CS Manish Gupta also facilitated the release of compliance software which shall help the practicing company secretaries in managing the compliance of client companies. Further Certificates for the participants at the Workshops organized by the ICSI-Registered Valuers Organisation were also awarded at the occasion.

PANEL DISCUSSION: EMERGING ECOSYSTEM AND BUSINESS FRAMEWORK: REINVENTING THE PROFESSION

Moderator: CS Ranjeet Pandey, Immediate Past President, ICSI

Panelists: Mr. Justice K R Jinan, Member, Kolkata Bench of NCLT, Dr. Navrang Saini, Whole Time Member, IBBI, Dr. Amarjit Singh, IAS, Chairman RERA Authority, Gujarat; Shri S Santhanakrishnan, Govt. Nominee on the Council, ICSI and Shri Pradeep Ramakrishnan, General Manager, SEBI.

Welcome Address: CS N P S Chawla, CS Chetan Patel

The panelists representing various regulatory bodies discussed on issues such as recovery post COVID, opportunities ahead. The panelists discussed on the areas which require special care after the pandemic including developing vibrant small cities, which in turn are self reliant, thereby reducing the migration to other cities, making efforts for generating employment, strengthening knowledge of technology, guiding boards on best technology to be adopted, sustainability reporting as core areas of company secretaries, ethical practices. Regulators also discussed on role of professional as Secretarial auditor, enhanced opportunities under RERA (Real Estate Regulatory Authority), Company Secretary Professional as Independent Director.

PANEL DISCUSSION: TRANSFORMATION FROM PROFESSION TO ENTREPRENEURSHIP

Moderator: CS Deepak Kumar Khaitan, Council Member and Chairman, PCS Committee, ICSI

Panelists: Dr. (Ms.) Madhu Vij, Govt. Nominee on the Council, ICSI, CS S K Aggarwal, Chairman, Vimal Organics Limited, CS Sanjay Jain, Managing Director TT Ltd., CS D C Jain, Past President, ICSI, Chairman & Mentor, Akums Drugs & Pharmaceuticals Ltd.

Welcome Address: CS B Narasimhan, Council Member, ICSI

The moderator guided the discussions towards the role of education in entrepreneurship. The panelists put forth their views stating that the education sets the background to have a mindset for entrepreneurship. They discussed on the pillars of success, i.e., hardwork, education, experience, luck, positive attitude and leadership skills. They discussed on the opportunities for a Company Secretary as future entrepreneurs, they stated that the professionals have the skills and the mindset to correlate the requirements and meet the ends, they can be prolific Managing Director, Entrepreneur. The Professionals need to think out of box, collaborate for complimentary skills and have mindset for entrepreneurship.

PROGRAMME FOR FAMILIARIZATION OF INDEPENDENT DIRECTORS HELD ON JUNE 20, 2020

The Programme for Familiarization of Independent Directors was successfully organized on June 20, 2020. The online webinar was attended by over 350 delegates from different parts of country. The active participation by delegates as well as dignitaries and distinguished invitees made the programme a grand success.

OPENING PLENARY



CS Manish Gupta, Council Member, The ICSI in his opening remarks informed that this programme was being organized jointly with IICA to provide IDs with insight into the provisions of Companies Act, SEBI LODR with respect to their roles, responsibilities, liabilities and the Code of Conduct to enable them to

play meaningful role in overall Governance of Companies.



CS Nagendra D. Rao, Vice President, The ICSI extended warm welcome to all the aspirant Independent Directors. He appraised that Independent Directors played a very important role in Board governance. He further added that role of Independent Directors position has been elevated

as their presence in board is just not only to comply with the law but their role now is facilitating, withstanding, countering pressures from owners, succession planning,

etc. He further appreciated that IICA and ICSI had a strategic alliance in capacity building, face to face learning for aspirant Independent Directors.

Mr Niraj Gupta, Nodal Officer for Independent Director Databank, IICA spoke about the importance of familiarization programme. He deliberated the origin of concept of Independent directors, role of professional Institutions to Independent Directors Institution and appreciated the efforts of ICSI since the inception of Independent Directors' Databank.

1st TECHNICAL SESSION – BECOMING INDEPENDENT DIRECTOR – DUE DILIGENCE



CS Vijaya Sampath, Independent Director, deliberated upon the four steps of due diligence, viz., Why, How, What and When in the companies. She explained why diligence was so important vis-à-vis the liabilities and responsibilities on the shoulders of Independent Directors. She emphasized

that it is the duty of Independent Director to maintain a balance between the stakeholders' interest. She explained in detail that there should not be any pecuniary relationship with the company to consider yourself independent before joining the company. Compliance with all applicable laws is very difficult but has to be checked as it very important part of Due Diligence.

She further explained the important points to consider for Due diligence such as type of company, percentage of Holding, Rights of PE Investors, holding of promoter,

whether shares are pledged, Identity of the Investors, nature of Industry and its products, Market share of company, size of the company, turnover and profits, background of promoters, etc.

2nd TECHNICAL SESSION TOPIC: CODE OF CONDUCT AND LIABILITIES OF INDEPENDENT DIRECTOR

CS Manish Gupta, Council Member, ICSI introduced the eminent faculty members of panel session and also coordinated the session.



Shri J N Gupta, Founder and Managing Director, Stakeholders Empowerment Services, explained in detail the need of code of conduct. He opined that, it is not the law but the self-discipline and self-governance which ensure code of conduct. He further advised that IDs should remain independent

to the resolution and have no attachment with the promoters or other board members. Decisions should be taken where interest of maximum stakeholders are achieved. He further advised the Company Secretaries to draft resolutions in simple language so that confusion can be avoided. Lead Independent Director should not consider himself as head of the group of Independent Directors but take the responsibility of bringing discipline in IDs group.



CS Ranjeet Pandey, Immediate Past President, The ICSI deliberated about the concept of Independence. He said that the criteria of Independence as defined in the provisions of Companies Act depends on the ethics and the relative position of the

concerned person. He further added that IDs have the power to enforce their rights as a collective body. He further added that Board Diversity is the reason of introduction of concept of Women Independent Director and Women Independent Director concept can be extended to unlisted companies.



Mr. Niraj Gupta, Nodal Officer, Independent Directors Databank explained that the code of conduct is a guideline that the regulator is expecting from professionals to follow. He, further added that board dynamics are changing as per provisions of law. Proficiency test has

been introduced by the Ministry of Corporate affairs to test their knowledge.

CLOSING PLENARY SESSION



CS Ashish Garg, President The ICSI spoke about the initiatives taken for the female CS members for Women Independent Directors during the last one year. He further added that participants should use this opportunity to enhance their knowledge. He also highlighted the capacity

building programmes organized for members.

CS Manish Gupta proposed a vote of thanks to the faculty for their valuable support, time and effort. He further added that the purpose of the workshop is to enrich the members with the concept of Code of Conduct and Due Diligence. With overwhelming response of 350 delegates, the workshop concluded on high note with takeaways that included concept of Due Diligence and Code of Conduct. He also thanked the participants for their dedication and interest in making the programme a great success.

THREE DAYS ONLINE WORKSHOP ON SECURITIES LAWS AND CAPITAL MARKETS SCHEDULED DURING JUNE 5-7, 2020

The Three Days online workshop on Securities Laws and Capital Market was successfully organized on June 5-7, 2020. The workshop was attended by over 450 delegates from different parts of country. The active participation by delegates as well as dignitaries and distinguished invitees made the workshop a grand success.

OPENING PLENARY



CS Praveen Soni, Council Member and Chairman, Financial Services Committee, ICSI extended warm welcome to the Chief Guest Mr. Justice Jog Singh, Former Judicial Member, SAT, CS (Adv.) Rakesh Puri, Advocate, Bombay High Court, Mumbai, CS Rahul Sahastrabudhe, Chairman, WIRC of ICSI, members and students of ICSI and delegates of the workshop.



Justice Jog Singh, Former Judicial Member, SAT in his address said that SEBI has done a tremendous job and developed robust regulatory regime and terms of controlling corporate is best not only in India but in the world. He has appreciated the way SEBI has brought jurisprudence in the system. SEBI not only regulates the market, but also acts as a watchdog. He appreciated the role of SEBI as adjudication. He further added that SEBI is performing all the three roles, i.e., legislation, bureaucracy or executive and judiciary very effectively. He further advised that litigants should come prepared with facts as facts are most important as one can intermingle with law later on. He thanked ICSI for giving opportunity to share his views.

1st TECHNICAL SESSION - OVERVIEW OF CAPITAL MARKETS AND LISTING REGULATIONS - LODR

CS Tushar Pahade, Member, WIRC of ICSI introduced the topic of the session. He further introduced the eminent speaker for the session - CS Pradeep Ramakrishnan, General Manager, SEBI.



CS Pradeep Ramakrishnan in his address explained the listing rules for the corporate by dividing them into two categories pre 1990 rules and post 1991 rules when liberalization started. He explained how SEBI has regulated the market by issuing circulars, then notification and further introducing regulations. He explained that SEBI has to perform the dual role, i.e., Regulate the market and develop the market. He also emphasized upon the spirit of disclosure and transparency as 90% corporate are promoter driven. He lauded CS as governance professional and their importance in Corporate Governance and acting as extended arm of law.

2nd TECHNICAL SESSION - OVERVIEW OF SEBI ACT, 1992: PENALTIES, ADJUDICATION, SCN, APPEARANCE BEFORE WTM, SEBI, SAT APPEAL, SC, SAT, SEBI ORDERS



CS (Adv.) Rakesh Puri explained the preamble, structure, penalty & adjudications and powers of SEBI in detail. He also explained the factors that affect the adjudicating officer and also advised professionals that since SEBI has no power to review so appeal against the order can be made in SAT only. He discussed various orders passed by SEBI, SAT and Supreme Court and explained it in a very simple and effective manner. CS Anil Dubey, Member, EIRC of ICSI introduced the guest speaker for the session.

3rd TECHNICAL SESSION - COMPLIANCE V/S GOVERNANCE



CS B Narasimhan Council Member, ICSI introduced the topic Compliance v/s Governance and added that compliance is a subset of Governance. He introduced Mr. J N Gupta, Former ED, SEBI & Founder and Managing Director, Stakeholders Empowerment Services.



Shri J N Gupta explained in detail the difference between Good Governance and Bad Governance. He explained that valuation report is not a perfect science but an art. He explained the concept of governance failure with various cases where only Governing Board has done compliance as per law. He advised that the resolutions be drafted in a manner which can be read by ordinary shareholder who has not read any book of law.

4th TECHNICAL SESSION - INSIDER TRADING AND FRAUDULENT AND UNFAIR TRADE PRACTICE

CS Suresh Pandey, Chairman, NIRC of ICSI introduced Mr. Vinay Chauhan, Advocate, Bombay High Court.



Mr. Vinay Chauhan explained the concept of Insider Trading and Fraudulent and Unfair Trade Practice, its origin and its coverage through various case laws. He explained in detail the difference between fiduciary theory and equal position theory.

SPECIAL SESSION



CS Ranjeet Pandey, Immediate Past President, The ICSI spoke about the initiatives taken by ICSI regarding securities laws. He informed about the representations made to regulators for recognition and suggestions for betterment. He advised fellow members to build up the confidence of

the investor, bring companies to MSME board first then to the main board, compliance management and advisory market to capital market, representation services and futuristic opportunity in capital market.

5th TECHNICAL SESSION - PROCEEDINGS BEFORE SEBI: INSPECTION, ANALYSIS OF SHOW CAUSE NOTICE (SCN), REPLY TO SCN AND PERSONAL HEARING, PROCEEDING BEFORE SAT – DRAFTING OF APPEAL



CS Chetan Patel, Council Member, ICSI welcomed and introduced Mrs. Rinku S Valanju, Advocate, Bombay High Court.

Advocate Valanju explained the various provisions wherein SEBI has power to penalize for violations. She further explained in detail how to analyze a Show Cause Notice, how to draft reply to show cause notice, important points to be remembered and personal hearing. She further explained who can appeal before SAT, format of SAT appeal, grounds of appeal, Powers of SAT and points to remember to file appeal before Supreme Court.



SPECIAL ADDRESS ON SECURITIES LAWS AND CAPITAL MARKETS



CS NPS Chawla, Council Member, ICSI extended warm welcome to Mr. Ananta Barua, Whole Time Member, SEBI, Mumbai.

Mr. Ananta Barua in his address gave an overview of the SEBI Act and Regulations. He observed that Company Secretary is obligated to the regulator and also prospective investors rely on annual secretarial audit report. He also explained different types of violations in capital market. He further added that Company Secretary plays three important roles, first for SEBI LODR regulations, secretarial compliance report plays an important role, second whole

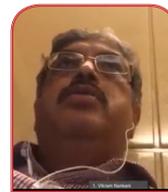
system is disclosure based so Secretarial Audit report is relied upon to large extent and third that intermediaries have to

maintain minimum net worth for mutual funds, a compliance certificate is required to be issued by the company secretary in this regard.

CS Pawan Chandak, Vice Chairman, WIRC of ICSI summarized the session and extended a vote of thanks to the speaker for the session.

6th TECHNICAL SESSION - COURT CRAFT, COURT MANNERISM AND PROCEEDINGS, LANDMARK SC JUDGMENTS ON SECURITIES LAWS

CS Ashish Karodia, Member and Immediate Past Chairman, WIRC of ICSI introduced the Speaker of Session - Mr. Vikram Nankani, Sr. Advocate, Bombay High Court, Mumbai.



Mr. Vikram Nankani spoke about the importance of effective communication in professional work and etiquettes. He further explained the manner that should be kept in mind while appearing before court. He further explained few judgments under SEBI laws where Supreme Court has given landmark judgments. He further advised Company

Secretaries who aspire to practice in Securities laws to focus on Time management, facts and make notes of the judgments.

CLOSING PLENARY SESSION



CS Nagendra D Rao, Vice President, The ICSI acknowledged CS Rakesh Puri and CS Praveen Tiwari for their valuable time and effort in organizing webinars and contributions to CCGRT, CoE Hyderabad. He further appreciated all Council Members of ICSI for sparing their valuable time and putting lot of effort in organizing workshops, webinars and

courses during this COVID- 19 lockdown situation.



CS Ashish Garg, President, The ICSI spoke about the initiatives taken during last one year in securities laws. He said that, appearing before SAT and SEBI is an important area and opportunity for company secretaries. He further added that the formation of Banking and Financial Services Task Force under the Chairmanship of

Shri D K Mittal, Former Secretary MCA shall be a new addition.

Mr Rakesh Puri proposed vote of thanks and further added that purpose of workshop is to enrich the members with the procedural knowledge of Securities laws. The workshop concluded on high note with takeaways that included procedural knowledge and further insights in drafting, proceedings and landmark judgments.



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Vision

"To be a global leader in promoting good corporate governance"

Motto

सत्यं वद। धर्मं चर। इत्येकं पथं गमतेः अनेके त्पु पन्थे भवतः

Mission

"To develop high calibre professionals facilitating good corporate governance"

ICSI BLOOD Bank Portal



**Dedicated to
the Service
of the Nation**

The ICSI Blood Bank Portal has a huge database of blood donors with information on Blood Groups with their location

To find a donor near you and to register as a donor visit
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**“Tough times call for tough measures, executed through
compassion and empathy.”**

Dear Stakeholders,

The Institute of Company Secretaries of India, while pursuing its vision, mission and goals has kept in sight its responsibilities towards the society. In furtherance of its commitment and dedication towards the society, the ICSI had created a dedicated Blood Bank Portal so as to provide easy access to those in need and a perfect medium for those willing to come forward as donors.

As we are all aware that the nation is going through times of trials and turbulence. The spread of the pandemic has called for a heightened effort and commitment on our part as professionals so as to support the nation and our fellow citizens.

Given the current scenario, the ICSI calls upon all its members and students to volunteer to donate blood by registering at the link: <https://www.icsi.in/bloodbank> by furnishing their personal details and location.

You may go through the FAQs to acquaint yourselves with the process. This will enable those in need to get in touch with you as and when required according you with the opportunity of saving someone's life.

Furthermore, in times of need, you or any of your near and dear ones can make use of the abovementioned to locate donors nearest to you.

The Institute looks forward to your valuable contribution to this noble humanitarian initiative, for as we have stood affirmed on the fact that

“Together we can. Together we will.”

(CS Ashish Garg)

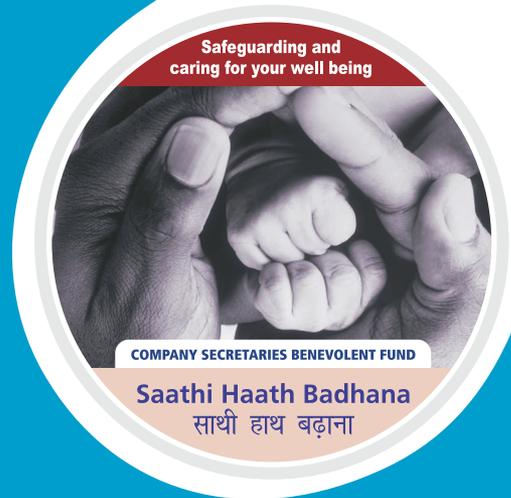
President

The Institute of Company Secretaries of India



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CSBF
COMPANY SECRETARIES
BENEVOLENT FUND



What exactly is CSBF?

The Company Secretaries Benevolent Fund (CSBF) is a Society registered under the Societies Registration Act, 1860 and is recognized under Section 12A of the Income Tax Act, 1961.

The CSBF was established in the year 1976 by the ICSI, for creating a security umbrella for the Company Secretaries and/or their dependent family members in distress.

The amount of ₹ 7,50,000 (in the case of death of a member under the age of 60 years) has been increased to ₹ 10,00,000

Is it the right time to enrol in CSBF?

CSBF is the protection you and your family need to survive the many ups and downs in life, be it a serious illness or a road accident which derails your plans for the future.

Is it a requirement?

Yes, as your dependents need the protection. Your dependents be it your parents, your spouse, or your children will have to bear the brunt of paying off your home/education personal loans and even for managing day-to-day expenses without your contribution.

If you do not want to leave behind such a situation in your absence, enrol in CSBF today.

Advantages of enrolling into CSBF

1

To ensure that your immediate family has some financial support in the event of your unfortunate demise

2

To finance your children's education and other needs

3

To ensure that you have extra resource during serious illness or accident

4

Subscription/Contribution to CSBF qualifies for deduction under Section 80G of the Income Tax Act, 1961

Become a proud Member of CSBF by making a one-time online subscription of ₹ 10,000/- through Institute's web portal (www.icsi.edu) along with Form 'A' available at link <https://www.icsi.edu/csbf/home> duly filled and signed.

Decide Now! Decide Wise!

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4

NEWS FROM THE INSTITUTE



- MEMBERS RESTORED DURING THE MONTH OF MAY 2020
- CERTIFICATE OF PRACTICE SURRENDERED DURING THE MONTH OF MAY 2020
- EXTENSION IN THE LAST DATE FOR PAYMENT OF ANNUAL MEMBERSHIP AND CERTIFICATE OF PRACTICE FEE FOR FY 2020-2021
- OBITUARIES
- DOCUMENTS DOWNLOADABLE FROM THE DIGILOCKER PLATFORM



Institute News

MEMBERS RESTORED DURING THE MONTH OF MAY 2020

S. NO.	A/F	MEM. NO.	NAME	REGION
1	A	25375	CS SANCHITA KASHYAP	NIRC
2	A	3280	CS P N RAMAKRISHNARAO	SIRC
3	A	13625	CS NEHA R GUHA	NIRC
4	A	38019	CS AISHWARYA SHRIPAD ZARE	WIRC
5	A	38096	CS ANISHA PADMANABH GARGA	WIRC
6	A	27524	CS POOJA AGGARWAL	NIRC
7	A	16667	CS PANKAJ AGARWALA	SIRC
8	F	10020	CS HIMANSHU AGGARWAL	NIRC
9	A	27666	CS ASHUTOSH GUPTA	NIRC
10	A	35007	CS SRIVIDYA CHANDRASEKAR	WIRC
11	A	37638	CS GAURAV RANA	NIRC
12	A	21398	CS MEGHA BATA	NIRC
13	A	40897	CS KAVITA RAMLAKHAN JAISWAL	WIRC
14	A	36326	CS PRAGATI LAAD	WIRC
15	A	35373	CS KIRTI19SAWANT@GMAIL.COM	WIRC
16	A	28872	CS ADITI ASHOK JAIN	WIRC
17	A	13342	CS SANJEEV GUPTA	WIRC
18	A	27689	CS NANDINI RAJ GUPTA	NIRC
19	A	31204	CS SUGEETA KURADA	SIRC
20	A	15791	CS GAJANAND SAHU	WIRC
21	A	24462	CS POORNIMA GOUR	F/NIRC
22	A	22999	CS ADITYA DARMWAL	NIRC
23	A	31005	CS YASHIKA	NIRC
24	A	39341	CS PRISCILLA SHEREEN LATHA	SIRC
25	A	24780	CS NEETA MANOHAR	F/SIRC
26	A	25455	CS GEORGE P MATHEW	SIRC
27	A	9062	CS A GURUDUTT	SIRC
28	A	12128	CS D VENKATESWARA SARMA	SIRC
29	A	9350	CS ARUN KUMAR SETH	NIRC
30	A	10352	CS LATHA B NAYAK	SIRC
31	A	51574	CS GARIMA PALIWAL	NIRC
32	F	2496	CS R VARAHAMOORTHY	SIRC

33	A	27563	CS VIVEK BHATIA	NIRC
34	A	36144	CS RASHMI JAGATSINGH DUDHARIA	SIRC
35	A	14003	CS VIJAYA BATT	EIRC
36	A	5511	CS S VENKATASUBRAMANIAN	SIRC
37	A	50091	CS ANURAG PANDEY	NIRC
38	A	25542	CS PALLAVI BARJATIYA	NIRC
39	A	14391	CS RAJANI SHARMA	NIRC
40	A	50001	CS ISHITA SANDEEP BHUWANIA	WIRC
41	A	49176	CS K VIVEK	SIRC
42	A	19777	CS SHANTANU MAKARAND GHARPURE	WIRC
43	F	8673	CS DISHA BALCHANDANI	F/WIRC
44	A	14915	CS SUNIL KUMAR BANSAL	F/EIRC
45	A	25612	CS ASHWINI ARVETI	F/SIRC
46	A	53310	CS HIMANSHU BAJPAI	NIRC
47	A	32468	CS DARSHANA KOTHARI	SIRC
48	A	19274	CS ANUBHA SITAL	NIRC
49	A	35072	CS MOHIT KUMAR BHATI	SIRC
50	A	39423	CS PRAVEENA VIJAYAN PILLAI	WIRC
51	A	11282	CS RAJESH KEDIA	WIRC
52	A	26720	CS C R VIDYA	SIRC
53	A	34543	CS DHIRENDER PRAKASH	NIRC
54	A	56557	CS UNNATI PANDEY	NIRC
55	A	49271	CS KHUSHBU JITENDRA SHAH	WIRC

CERTIFICATE OF PRACTICE SURRENDERED DURING THE MONTH OF MAY 2020

SL. NO.	NAME	MEMBNO	COP NO.	REGION
1	CS CHANDANI KHANDELWAL	A - 46901	20686	NIRC
2	CS PRIYA GUPTA	A - 53595	20188	NIRC
3	CS SHANU AGRAWAL	A - 36257	16144	NIRC
4	CS ANKIT GUPTA	A - 57716	22140	EIRC
5	CS ABY THOMAS	A - 55799	20739	SIRC
6	CS JAYASHREE CHANDRASEKARAN	A - 7331	8327	SIRC
7	CS SRINIVASAN VIJAYA RAGHAVAN	A - 10216	15893	SIRC
8	CS RATNASABAPATHY SOMASUNDARAM SHANMUGAM	F - 2255	20252	SIRC
9	CS MD NAIM	A - 54134	20959	EIRC
10	CS G AKILA	A - 18642	15040	SIRC
11	CS TRISHNA CHOUDHARY	A - 46441	20696	NIRC
12	CS SWATI JAIN	A - 54958	20450	NIRC

13	CS NAMRATA SRIVASTAVA	A - 35188	13054	NIRC
14	CS ROHIT KASHYAP	A - 27587	21753	NIRC
15	CS ALPANA SUJAN POBI	F - 10191	16131	SIRC
16	CS RAJALAKSHMI SIVARAMAN	A - 56123	20924	SIRC
17	CS MANISHA HARSHAD THAKUR	A - 10855	16344	WIRC
18	CS BINU SINGH	A - 20300	9862	WIRC

ATTENTION!

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 <https://www.icsi.edu/member>



EXTENSION IN THE LAST DATE FOR PAYMENT OF ANNUAL MEMBERSHIP AND CERTIFICATE OF PRACTICE FEE FOR FY 2020-2021

The annual membership and certificate of practice fee for FY 2020-21 has become payable w.e.f. 1st April, 2020, the last date for receiving both payment has been extended till 30th September, 2020 without additional Restoration and Entrance fees.

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

Particulars	Associate (admitted till 31.03.2019)	Associate (admitted on or after 01.04.2019)	Fellow
Annual Membership fee*	Rs. 2950	Rs. 1770	Rs. 3540
Certificate of Practice fee*	Rs. 2360	Rs. 1770	Rs. 2360

* Fee includes GST@18%.

A member who is seventy years and above in age pays only 25% while a physically challenged member pays only 50% of the Associate/Fellow Annual Membership fee as per The Company Secretaries (Amendment) Regulations, 2020.

MODE OF REMITTANCE OF FEE

The fee can be remitted **ONLINE** only using Institute's website www.icsi.edu through the member login portal <https://www.icsi.in/student/Login.aspx> entering Username and Password, selecting option **Manage Account** and then **Annual Membership Fee**. User Name is the ACS / FCS number e.g. A12345 / F12345. **Payment through other modes is not accepted.**

Members not having Password can retrieve it if their email id & mobile number is registered with the Institute, otherwise the member needs to make a request for providing Password on <http://support.icsi.edu> attaching a scanned copy of Photo ID proof.

The following be kindly noted/ensured before making online payment of fee:

1. Non-CoP holders need to register for eCSIN if not registered yet.
2. CoP holders need to register for UDIN if not registered yet.
3. Declaration of PAN & Aadhaar is required.
4. Members are required to verify and update their address and contact details as required under Regulation 3 of the CS Regulations, 1982 amended till date.
5. Declaration of GSTIN (optional) is required if one wants to claim GST Input Tax Credit. If GSTIN is not given, it will not be reflected in fee receipt.
6. The fee is calculated by the system including GST@18%.
7. CoP holders can pay CoP renewal fee alongwith the annual membership fee or separately after having paid the annual membership fee first.
8. Submission of online Form-D is a pre-requisite for CoP holders.

For more details, kindly refer to FAQs (Link is available on home page of www.icsi.edu at top right corner) Point 6-16 (about membership fee), 20-26 (about CoP fee) and 88-92 (about PCH) at the link: https://www.icsi.edu/media/webmodules/FAQ_Pertains_Membership.pdf

ATTENTION!

For members login portal <https://www.icsi.in/student/Login.aspx>



For any further assistance, we are available to help you at <http://support.icsi.edu>



If you are looking for job, please register at ICSI Placement Portal <https://placement.icsi.edu> to apply for Jobs



Team ICSI

OBITUARIES

Chartered Secretary deeply regrets to record the sad demise of the following Members:

CS K V S Raghavan (20.04.1944 – 17.05.2020), an Associate Member of the Institute from Chennai.

CS P Krishnasamy (30.07.1959 – 06.03.2020), an Associate Member of the Institute from Chennai.

CS Ved Prakash Gupta (20.05.1955 – 15.05.2020), a Fellow Member of the Institute from Delhi.

CS Shrikant W Hawaldar (17.05.1957 – 14.05.2020), an Associate Member of the Institute from Thane.

May the Almighty give sufficient fortitude to the bereaved family members to withstand the irreparable loss.

May the departed souls rest in peace.

DOCUMENTS DOWNLOADABLE FROM THE DIGILOCKER PLATFORM



**THE INSTITUTE OF
Company Secretaries of India**
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

The National Digital Locker System, launched by Govt. of India, is a secure cloud based platform for storage, sharing and verification of documents and certificates. In the wake of digitization and in an attempt to issue documents to all the members in a standard format and make them electronically available on real-time basis, the Institute of Company Secretaries of India had connected itself with the DigiLocker platform of the Government of India. The initiative was launched on 5th October, 2019 in the presence of the Hon'ble President of India.

In addition to their identity cards and Associate certificates, members can also now access and download their Fellow certificates and Certificates of Practice from the DigiLocker anytime, anywhere.

**How to Access:**

- Go to <https://digilocker.gov.in> and click on Sign Up
- You may download the DigiLocker mobile app from mobile store (Android/iOS)

How to Login:

- Signing up for DigiLocker with your mobile number.
- Your mobile number is authenticated by an OTP (one-time password).
- Select a username & password. This will create your DigiLocker account.
- After your DigiLocker account is successfully created, you can voluntarily provide your Aadhaar number (issued by UIDAI) to avail additional services.

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On successful validation of credential go to “Pull Documents” in the Issued document section, select the partner name “The Institute of Company Secretaries of India” & document type “Identity Card” and enter the document details asked for to fetch the same.

We believe that this initiative shall go a long way in providing ease of access of all documents of our members and rendering them just a click away.

5

MISCELLANEOUS CORNER



- GST CORNER
- ETHICS IN PROFESSION
- STARTUP INDIA
- CORPORATE GOVERNANCE CORNER

NOTIFICATION NO. 44/2020- CENTRAL TAX DATED 8TH JUNE, 2020

In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with rule 3 of the Central Goods and Services Tax (Fifth Amendment) Rules, 2020 (hereinafter referred to as the rules), made vide notification No. 38/2020 – Central Tax, dated the 5th May, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 272(E), dated the 5th May, 2020, the Government, hereby appoints the 8th day of June, 2020, as the date from which the said provisions of the rules, shall come into force.

NOTIFICATION NO. 45/2020 – CENTRAL TAX DATED 9TH JUNE, 2020

In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Government, on the recommendations of the Council, hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.10/2020- Central Tax, dated the 21st March, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 193(E), dated the 21st March, 2020, namely:-

In the said notification, in the first paragraph, for the figures, letters and words “31st day of May, 2020”, the figures, letters and words “31st day of July, 2020” shall be substituted.

2. This notification shall come into force with effect from 31st day of May, 2020.

NOTIFICATION NO. 46/2020 – CENTRAL TAX DATED 9TH JUNE, 2020

In exercise of the powers conferred by section 168A of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), read with section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), and section 21 of Union Territory Goods and Services Tax Act, 2017 (14 of 2017), in view of the spread of pandemic COVID-19 across many countries of the world including India, the Government, on the recommendations of the Council, hereby notifies that in cases where a notice has been issued for rejection for rejection of refund claim, in full or in part and where the time limit for issuance of order in terms of provisions of sub-section (5), read with sub-section (7) of section 54 of the said act falls during the period from the 20th day of March, 2020 to the 29th day of June, 2020 in such cases the time limit for issuance of the said order shall be extended to fifteen days after receipt of reply to the notice from registered person or the 30th day of June, 2020, whichever is later.

2. This notification shall come into force with effect from 20th day of March, 2020.

NOTIFICATION NO. 47/2020 – CENTRAL TAX DATED 9TH JUNE, 2020

In exercise of the powers conferred by section 168A of the Central Goods and Services Tax Act, 2017 (12 of 2017)

(hereafter in this notification referred to as the said Act), read with section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), and section 21 of Union Territory Goods and Services Tax Act, 2017 (14 of 2017), the Government, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 35/2020- Central Tax, dated the 3rd April, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 235(E), dated the 3rd April, 2020, namely:-

In the said notification, in the first paragraph, in clause (ii), for the proviso, the following proviso shall be substituted, namely: –

“Provided that where an e-way bill has been generated under rule 138 of the Central Goods and Services Tax Rules, 2017 on or before the 24th day of March, 2020 and whose validity has expired on or after the 20th March, 2020, the validity period of such e-way bill shall be deemed to have been extended till the 30st day of June, 2020.”

2. This notification shall come into force with effect from the 31st day of May, 2020

NOTIFICATION NO. 48/2020 – CENTRAL TAX DATED 19TH JUNE, 2020

In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely: -

1. (1) These rules may be called the Central Goods and Services Tax (Sixth Amendment) Rules, 2020.
(2) They shall come into force on 27th day of May, 2020.
2. In the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), in rule 26 in sub-rule (1), for the second proviso, following provisos shall be substituted, namely: -

“Provided further that a registered person registered under the provisions of the Companies Act, 2013 (18 of 2013) shall, during the period from the 21st day of April, 2020 to the 30th day of September, 2020, also be allowed to furnish the return under section 39 in **FORM GSTR-3B** verified through electronic verification code (EVC).

Provided also that a registered person registered under the provisions of the Companies Act, 2013 (18 of 2013) shall, during the period from the 27th day of May, 2020 to the 30th day of September, 2020, also be allowed to furnish the details of outward supplies under section 37 in **FORM GSTR-1** verified through electronic verification code (EVC).”.

NOTIFICATION NO. 49/2020- CENTRAL TAX DATED 24TH JUNE, 2020

In exercise of the powers conferred by sub-section (2) of

section 1 of the Finance Act, 2020 (12 of 2020) (hereinafter referred to as the said Act), the Central Government hereby appoints the 30th day of June, 2020, as the date on which the provisions of sections 118, 125, 129 and 130 of the said Act, shall come into force.

NOTIFICATION NO. 50/2020 – CENTRAL TAX DATED 24TH JUNE, 2020

In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely:-

1. (1) These rules may be called the Central Goods and Services Tax (Seventh Amendment) Rules, 2020.
- (2) They shall come into force with effect from the 01st day of April, 2020.
2. In the Central Goods and Services Tax Rules, 2017, in rule 7, for the Table, the following Table shall be substituted, namely:-

Sl No.	Section under which composition levy is opted	Category of registered persons	Rate of tax
(1)	(1A)	(2)	(3)
1.	Sub-sections (1) and (2) of section 10	Manufacturers, other than manufacturers of such goods as may be notified by the Government	half percent. of the turnover in the State or Union territory
2.	Sub-sections (1) and (2) of section 10	Suppliers making supplies referred to in clause (b) of paragraph 6 of Schedule II	two and a half percent of the turnover in the State or Union territory
3.	Sub-sections (1) and (2) of section 10	Any other supplier eligible for composition levy under sub-sections (1) and (2) of section 10	half percent. of the turnover of taxable supplies of goods and services in the State or Union territory
4.	Sub-section (2A) of section 10	Registered persons not eligible under the composition levy under subsections (1) and (2), but eligible to opt to pay tax under sub-section (2A), of section 10	three percent. of the turnover of taxable supplies of goods and services in the State or Union territory.”.

NOTIFICATION NO. 51/2020 – CENTRAL TAX DATED 24TH JUNE, 2020

In exercise of the powers conferred by sub-section (1) of section 50 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with section 148 of the said Act, the Central Government, on the recommendations of the Council, hereby makes the following further amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), No.13/2017 – Central Tax, dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 661(E), dated the 28th June, 2017, namely:-

In the said notification, in the first paragraph, for the first proviso, the following proviso shall be substituted, namely : –

“Provided that the rate of interest per annum shall be as specified in column (3) of the Table given below for the period mentioned therein, for the class of registered persons mentioned in the corresponding entry in column (2) of the said Table, who are required to furnish the returns in **FORM GSTR-3B**, but fail to furnish the said return along with payment of tax for the months mentioned in the corresponding entry in column (4) of the said Table by the due date, namely:- Table

S. No.	Class of registered persons	Rate of Interest	Tax Period
(1)	(2)	(3)	(4)
1.	Taxpayers having an aggregate turnover of more than rupees 5 crores in the preceding financial year	Nil for first 15 days from the due date, and 9 percent thereafter till 24 th day of June, 2020	February, 2020, March 2020, April, 2020
2.	Taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year, whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana or Andhra Pradesh or the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands and Lakshadweep	Nil till the 30 th day of June, 2020, and 9 percent thereafter till the 30 th day of September, 2020 Nil till the 3 rd day of July, 2020, and 9 percent thereafter till the 30 th day of September, 2020 Nil till the 6 th day of July, 2020, and 9 percent thereafter till the 30 th day of September, 2020	February, 2020 March, 2020 April, 2020

		Nil till the 12 th day of September, 2020, and 9 percent thereafter till the 30 th day of September, 2020	May, 2020
		Nil till the 23 rd day of September, 2020, and 9 percent thereafter till the 30 th day of September, 2020	June, 2020
		Nil till the 27 th day of September, 2020, and 9 percent thereafter till the 30 th day of September, 2020	July, 2020
3.	Taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year, whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha or the Union territories of Jammu and Kashmir, Ladakh, Chandigarh and Delhi	Nil till the 30 th day of June, 2020, and 9 percent thereafter till the 30 th day of September, 2020	February, 2020
		Nil till the 5 th day of July, 2020, and 9 percent thereafter till the 30 th day of September, 2020	March, 2020
		Nil till the 9 th day of July, 2020, and 9 percent thereafter till the 30 th day of September, 2020	April, 2020
		Nil till the 15 th day of September, 2020, and 9 percent thereafter till the 30 th day of September, 2020	May, 2020

		Nil till the 25 rd day of September, 2020, and 9 percent thereafter till the 30 th day of September, 2020	June, 2020
		Nil till the 29 th day of September, 2020, and 9 percent thereafter till the 30 th day of September, 2020	July, 2020

NOTIFICATION NO. 52/2020 – CENTRAL TAX DATED 24TH JUNE, 2020

In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), read with section 148 of the said Act, the Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 76/2018– Central Tax, dated the 31st December, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i) vide number G.S.R. 1253(E), dated the 31st December, 2018, namely :–

In the said notification,-

- (i) in the third proviso, for the Table, the following Table shall be substituted, namely : –

S. No.	Class of registered persons	Tax Period	Condition
(1)	(2)	(3)	(4)
1.	Taxpayers having an aggregate turnover of more than rupees 5 crores in the preceding financial year	February, 2020, March 2020, April, 2020	If return in FORM GSTR-3B is furnished on or before the 24 th day of June, 2020
2.	Taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year, whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa,	February, 2020	If return in FORM GSTR-3B is furnished on or before the 30 th day of June, 2020

	Kerala, Tamil Nadu, Telangana or Andhra Pradesh or the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands and Lakshadweep	March, 2020 April, 2020 May, 2020 June, 2020 July, 2020	If return in FORM GSTR-3B is furnished on or before the 3 rd day of July, 2020 If return in FORM GSTR-3B is furnished on or before the 6 th day of July, 2020 If return in FORM GSTR-3B is furnished on or before the 12 th day of September, 2020 If return in FORM GSTR-3B is furnished on or before the 23 rd day of September, 2020 If return in FORM GSTR-3B is furnished on or before the 27 th day of September, 2020
3.	Taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year, whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha or the Union territories of Jammu and Kashmir, Ladakh, Chandigarh and Delhi	February, 2020	If return in FORM GSTR-3B is furnished on or before the 30 th day of June, 2020

		March, 2020 April, 2020 May, 2020 June, 2020 July, 2020	If return in FORM GSTR-3B is furnished on or before the 5 th day of July, 2020 If return in FORM GSTR-3B is furnished on or before the 9 th day of July, 2020 If return in FORM GSTR-3B is furnished on or before the 15 th day of September, 2020 If return in FORM GSTR-3B is furnished on or before the 25 th day of September, 2020 If return in FORM GSTR-3B is furnished on or before the 29 th day of September, 2020
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(ii) after the third proviso, the following provisos shall be inserted, namely: –

“Provided also that the total amount of late fee payable for a tax period, under section 47 of the said Act shall stand waived which is in excess of an amount of two hundred and fifty rupees for the registered person who failed to furnish the return in **FORM GSTR-3B** for the months of July, 2017 to January, 2020, by the due date but furnishes the said return between the period from 01st day of July, 2020 to 30th day of September, 2020:

Provided also that where the total amount of central tax payable in the said return is nil, the total amount of late fee payable for a tax period, under section 47 of the said Act shall stand waived for the registered person who failed to furnish the return in **FORM GSTR-3B** for the months of July, 2017 to January, 2020, by the due date but furnishes the said return between the period from 01st day of July, 2020 to 30th day of September, 2020.”

NOTIFICATION NO. 53/2020 – CENTRAL TAX DATED 24TH JUNE, 2020

In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Government, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 4/2018– Central Tax, dated the 23rd January, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub- section (i) vide number G.S.R. 53(E), dated the 23rd January, 2018, namely:–

In the said notification, for the third proviso, the following proviso shall be substituted, namely: –

“Provided also that the amount of late fee payable under section 47 of the said Act shall stand waived for the registered persons who fail to furnish the details of outward supplies for the months or quarter mentioned in column (2) of the Table below in **FORM GSTR-1** by the due date, but furnishes the said details on or before the dates mentioned in column (3) of the said Table:-

S. No.	Month/Quarter	Dates
(1)	(2)	(3)
1.	March, 2020	10 th day of July, 2020
2.	April, 2020	24 th day of July, 2020
3.	May, 2020	28 th day of July, 2020
4.	June, 2020	5 th day of August, 2020
5.	January to March, 2020	17 th day of July, 2020
6.	April to June, 2020	3 rd day of August, 2020

NOTIFICATION NO. 54/2020 – CENTRAL TAX DATED 24TH JUNE, 2020

In exercise of the powers conferred by section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017), read with sub-rule (5) of rule 61 of the Central Goods and Services Tax Rules, 2017 (hereafter in this notification referred to as the said Rules), the Commissioner, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 29/2020 – Central Tax, dated the 23rd March, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub- section (i) vide number G.S.R. 212 (E), dated the 23rd March, 2020, namely:–

In the said notification, in the first paragraph, after the fifth proviso, the following provisos shall be inserted, namely: –

“Provided also that, for taxpayers having an aggregate turnover of up to rupees five crore rupees in the previous financial year, whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep, the return in **FORM GSTR-3B** of the said rules for the month of August, 2020 shall be furnished

electronically through the common portal, on or before the 1st day of October, 2020:

Provided also that, for taxpayers having an aggregate turnover of up to rupees five crore rupees in the previous financial year, whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi, the return in **FORM GSTR-3B** of the said rules for the month of August, 2020 shall be furnished electronically through the common portal, on or before the 3rd day of October, 2020.”.

NOTIFICATION NO. 55/2020- CENTRAL TAX DATED 27TH JUNE, 2020

In exercise of the powers conferred by section 168A of the Central Goods and Services Tax Act, 2017 (12 of 2017), read with section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), and section 21 of the Union Territory Goods and Services Tax Act, 2017 (14 of 2017), the Government, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 35/2020-Central Tax, dated the 3rd April, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 235(E), dated the 3rd April, 2020, namely:-

In the said notification, in the first paragraph, in clause (i),--

- (i) for the words, figures and letters “29th day of June, 2020”, the words, figures and letters “30th day of August, 2020” shall be substituted;
- (ii) for the words, figures and letters “30th day of June, 2020”, the words, figures and letters “31st day of August, 2020” shall be substituted.

NOTIFICATION NO. 56/2020 – CENTRAL TAX DATED 27TH JUNE, 2020

In exercise of the powers conferred by section 168A of the Central Goods and Services Tax Act, 2017 (12 of 2017), read with section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), and section 21 of the Union Territory Goods and Services Tax Act, 2017 (14 of 2017), the Government, on the recommendations of the Council, hereby makes the following amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.46/2020-Central Tax, dated the 9th June, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub- section (i), vide number G.S.R. 361(E), dated the 9th June, 2020, namely:-

In the said notification, in the first paragraph,--

- (i) for the words, figures and letters “29th day of June, 2020”, the words, figures and letters “30th day of August, 2020” shall be substituted;

- (ii) for the words, figures and letters “30th day of June, 2020”, the words, figures and letters “31st day of August, 2020” shall be substituted.

NOTIFICATION NO. 57/2020 – CENTRAL TAX DATED 30TH JUNE, 2020

In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), read with section 148 of the said Act, the Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 76/2018– Central Tax, dated the 31st December, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 1253(E), dated the 31st December, 2018, namely :–

In the said notification, after the third proviso, the following provisos shall be inserted, namely: –

“Provided also that for the class of registered persons mentioned in column (2) of the Table of the above proviso, who fail to furnish the returns for the tax period as specified in column (3) of the said Table, according to the condition mentioned in the corresponding entry in column (4) of the said Table, but furnishes the said return till the 30th day of September, 2020, the total amount of late fee payable under section 47 of the said Act, shall stand waived which is in excess of two hundred and fifty rupees and shall stand fully waived for those taxpayers where the total amount of central tax payable in the said return is nil:

Provided also that for the taxpayers having an aggregate turnover of more than rupees 5 crores in the preceding financial year, who fail to furnish the return in FORM GSTR-3B for the months of May, 2020 to July, 2020, by the due date but furnish the said return till the 30th day of September, 2020, the total amount of late fee under section 47 of the said Act, shall stand waived which is in excess of two hundred and fifty rupees and shall stand fully waived for those taxpayers where the total amount of central tax payable in the said return is nil.”.

2. This notification shall be deemed to have come into effect from the 25th day of June, 2020.

NOTIFICATION NO. 02/2020 – UNION TERRITORY TAX DATED 24TH JUNE, 2020

In exercise of the powers conferred by section 21 of the Union Territory Goods and Services Tax Act, 2017 (14 of 2017), read with sub-section (1) of section 50 and section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Government, on the recommendations of the Council, hereby makes the following further amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 10/2017 – Union Territory Tax, dated the 30th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 747(E), dated the 30th June, 2017, namely:–

In the said notification, in the first paragraph, for the first proviso, the following proviso shall be substituted, namely: –

“Provided that the rate of interest per annum shall be as specified in column (3) of the Table given below for the

period mentioned therein, for the class of registered persons mentioned in the corresponding entry in column (2) of the said Table, who are required to furnish the returns in **FORM GSTR-3B**, but fail to furnish the said return along with payment of tax for the months mentioned in the corresponding entry in column (4) of the said Table by the due date, namely:–

S. No.	Class of registered persons	Rate of Interest	Tax Period
(1)	(2)	(3)	(4)
1.	Taxpayers having an aggregate turnover of more than rupees 5 crores in the preceding financial year	Nil for first 15 days from the due date, and 9 percent thereafter till 24 th day of June, 2020	February, 2020, March 2020, April, 2020
2.	Taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year, whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana or Andhra Pradesh or the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands and Lakshadweep	Nil till the 30 th day of June, 2020, and 9 percent thereafter till the 30 th day of September, 2020	February, 2020
		Nil till the 3 rd day of July, 2020, and 9 percent thereafter till the 30 th day of September, 2020	March, 2020
		Nil till the 6 th day of July, 2020, and 9 percent thereafter till the 30 th day of September, 2020	April, 2020
		Nil till the 12 th day of September, 2020, and 9 percent thereafter till the 30 th day of September, 2020	May, 2020
		Nil till the 23 rd day of September, 2020, and 9 percent thereafter till the 30 th day of September, 2020	June, 2020
		Nil till the 27 th day of September, 2020, and 9 percent thereafter till the 30 th day of September, 2020	July, 2020

3.	Taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year, whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha or the Union territories of Jammu and Kashmir, Ladakh, Chandigarh and Delhi	Nil till the 30 th day of June, 2020, and 9 percent thereafter till the 30 th day of September, 2020	February, 2020
		Nil till the 5 th day of July, 2020, and 9 percent thereafter till the 30 th day of September, 2020	March, 2020
		Nil till the 9 th day of July, 2020, and 9 percent thereafter till the 30 th day of September, 2020	April, 2020
		Nil till the 15 th day of September, 2020, and 9 percent thereafter till the 30 th day of September, 2020	May, 2020
		Nil till the 25 th day of September, 2020, and 9 percent thereafter till the 30 th day of September, 2020	June, 2020
		Nil till the 29 th day of September, 2020, and 9 percent thereafter till the 30 th day of September, 2020	July, 2020

NOTIFICATION NO. 04/2020 – INTEGRATED TAX DATED 24TH JUNE, 2020

In exercise of the powers conferred by sub-section (2) of section 1 of the Finance Act, 2020 (12 of 2020) (hereinafter referred to as the said Act), the Central Government hereby appoints the 30th day of June, 2020, as the date on which the provisions of section 134 of the said Act, shall come into force.

NOTIFICATION NO. 05/2020 – INTEGRATED TAX DATED 24TH JUNE, 2020

In exercise of the powers conferred by section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), read with sub-section (1) of section 50 and section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Government, on the recommendations of the Council, hereby makes the following further amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 6/2017 – Integrated Tax, dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 698(E), dated the 28th June, 2017, namely:–

In the said notification, in the first paragraph, for the first proviso, the following proviso shall be substituted, namely: –

“Provided that the rate of interest per annum shall be as specified in column (3) of the Table given below for the period mentioned therein, for the class of registered persons mentioned in the corresponding entry in column (2) of the said Table, who are required to furnish the returns in **FORM GSTR-3B**, but fail to furnish the said return along with payment of tax for the months mentioned in the corresponding entry in column (4) of the said Table by the due date, namely:--



S. No.	Class of registered persons	Rate of Interest	Tax Period
(1)	(2)	(3)	(4)
1.	Taxpayers having an aggregate turnover of more than rupees 5 crores in the preceding financial year	Nil for first 15 days from the due date, and 9 percent thereafter till 24 th day of June, 2020	February, 2020, March 2020, April, 2020
2.	Taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year, whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu,	Nil till the 30 th day of June, 2020, and 9 percent thereafter till the 30 th day of September, 2020 Nil till the 3 rd day of July, 2020, and 9 percent thereafter till the 30 th day of September, 2020	February, 2020 March, 2020

	Telangana or Andhra Pradesh or the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands and Lakshadweep	Nil till the 6 th day of July, 2020, and 9 percent thereafter till the 30 th day of September, 2020 Nil till the 12 th day of September, 2020, and 9 percent thereafter till the 30 th day of September, 2020 Nil till the 23 rd day of September, 2020, and 9 percent thereafter till the 30 th day of September, 2020 Nil till the 27 th day of September, 2020, and 9 percent thereafter till the 30 th day of September, 2020	April, 2020 May, 2020 June, 2020 July, 2020
3.	Taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year, whose principal place of business is in the States of Himachal Pradesh,	Nil till the 30 th day of June, 2020, and 9 percent thereafter till the 30 th day of September, 2020	February, 2020

	Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha or the Union territories of Jammu and Kashmir, Ladakh, Chandigarh and Delhi	Nil till the 5 th day of July, 2020, and 9 percent thereafter till the 30 th day of September, 2020 Nil till the 9 th day of July, 2020, and 9 percent thereafter till the 30 th day of September, 2020 Nil till the 15 th day of September, 2020, and 9 percent thereafter till the 30 th day of September, 2020 Nil till the 25 th day of September, 2020, and 9 percent thereafter till the 30 th day of September, 2020 Nil till the 29 th day of September, 2020, and 9 percent thereafter till the 30 th day of September, 2020	March, 2020 April, 2020 May, 2020 June, 2020 July, 2020
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CIRCULARS

CIRCULAR NO. 139/09/2020 – GST DATED 10TH JUNE, 2020

Clarification on refund related issues-reg.

Various representations have been received seeking clarification on the issue relating to refund of accumulated ITC in respect of invoices whose details are not reflected in the **FORM GSTR-2A** of the applicant. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of law in this regard across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues detailed hereunder:

2. Circular No.135/05/2020 – GST dated the 31st March, 2020 states that:

"5. Guidelines for refunds of Input Tax Credit under Section 54(3)

5.1 In terms of para 36 of circular No. 125/44/2019-GST dated 18.11.2019, the refund of ITC availed in respect of invoices not reflected in FORM GSTR-2A was also admissible and copies of such invoices were required to be uploaded. However, in wake of insertion of sub-rule (4) to rule 36 of the CGST Rules, 2017 vide notification No. 49/2019-GST dated 09.10.2019, various references have been received from the field formations regarding admissibility of refund of the ITC availed on the invoices which are not reflecting in the FORM GSTR-2A of the applicant.

5.2 The matter has been examined and it has been decided that the refund of accumulated ITC shall be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM

GSTR-2A of the applicant. Accordingly, para 36 of the circular No. 125/44/2019-GST, dated 18.11.2019 stands modified to that extent.”

- 3.1 Representations have been received that in some cases, refund sanctioning authorities have rejected the refund of accumulated ITC in respect of ITC availed on imports, ISD invoices, RCM etc. citing the above-mentioned Circular on the basis that the details of the said invoices/ documents are not reflected in **FORM GSTR-2A** of the applicant.
- 3.2 In this context it is noteworthy that before the issuance of Circular No. 135/05/2020- GST dated 31st March, 2020, refund was being granted even in respect of credit availed on the strength of missing invoices (not reflected in **FORM GSTR-2A**) which were uploaded by the applicant along with the refund application on the common portal. However, vide Circular No.135/05/2020 – GST dated the 31st March, 2020, the refund related to these missing invoices has been restricted. Now, the refund of accumulated ITC shall be restricted to the ITC available on those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant.
4. The aforesaid circular does not in any way impact the refund of ITC availed on the invoices / documents relating to imports, ISD invoices and the inward supplies liable to Reverse Charge (RCM supplies) etc.. It is hereby clarified that the treatment of refund of such ITC relating to imports, ISD invoices and the inward supplies liable to Reverse Charge (RCM supplies) will continue to be same as it was before the issuance of Circular No. 135/05/2020- GST dated 31st March, 2020.

CIRCULAR NO. 140/10/2020 – GST DATED 10TH JUNE, 2020

Clarification in respect of levy of GST on Director's remuneration-reg.

Various references have been received from trade and industry seeking clarification whether the GST is leviable on Director's remuneration paid by companies to their directors. Doubts have been raised as to whether the remuneration paid by companies to their directors falls under the ambit of entry in Schedule III of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act) i.e. “services by an employee to the employer in the course of or in relation to his employment” or whether the same are liable to be taxed in terms of notification No. 13/2017 – Central Tax (Rate) dated 28.06.2017 (entry no.6).

2. The issue of remuneration to directors has been examined under following two different categories:
 - (i) leviability of GST on remuneration paid by companies to the independent directors defined in terms of section 149(6) of the Companies Act, 2013 or those directors who are not the employees of the said company; and

- (ii) leviability of GST on remuneration paid by companies to the whole-time directors including managing director who are employees of the said company.

3. In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act hereby clarifies the issue as below:

Leviability of GST on remuneration paid by companies to the independent directors or those directors who are not the employee of the said company

- 4.1 The primary issue to be decided is whether or not a “Director” is an employee of the company. In this regard, from the perusal of the relevant provisions of the Companies Act, 2013, it can be inferred that:
 - a. the definition of a whole time-director under section 2(94) of the Companies Act, 2013 is an inclusive definition, and thus he **may be a person who is not an employee** of the company.
 - b. the definition of “independent directors” under section 149(6) of the Companies Act, 2013, read with Rule 12 of Companies (Share Capital and Debentures) Rules, 2014 makes it amply clear that **such director should not have been an employee** or proprietor or a partner of the said company, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed in the said company.
- 4.2 Therefore, in respect of such directors who are not the employees of the said company, the services provided by them to the Company, in lieu of remuneration as the consideration for the said services, are clearly outside the scope of Schedule III of the CGST Act and are therefore taxable. In terms of entry at Sl. No. 6 of the Table annexed to notification No. 13/2017 – Central Tax (Rate) dated 28.06.2017, the recipient of the said services i.e. the Company, is liable to discharge the applicable GST on it on reverse charge basis.
- 4.3 Accordingly, it is hereby clarified that the remuneration paid to such independent directors, or those directors, by whatever name called, who are not employees of the said company, is taxable in hands of the company, on reverse charge basis.

Leviability of GST on remuneration paid by companies to the directors, who are also an employee of the said company

- 5.1 Once, it has been ascertained whether a director, irrespective of name and designation, is an employee, it would be pertinent to examine whether all the activities performed by the director are in the course of employer-employee relation (i.e. a “*contract of service*”) or is there any element of “*contract for service*”. The issue has been deliberated by various courts and it has been held that a director who has also taken an employment

in the company may be functioning in dual capacities, namely, one as a director of the company and the other on the basis of the contractual relationship of master and servant with the company, i.e. under a contract of service (employment) entered into with the company.

- 5.2 It is also pertinent to note that similar identification (to that in Para 5.1 above) and treatment of the Director's remuneration is also present in the Income Tax Act, 1961 wherein the salaries paid to directors are subject to Tax Deducted at Source ('TDS') under Section 192 of the Income Tax Act, 1961 ('IT Act'). However, in cases where the remuneration is in the nature of professional fees and not salary, the same is liable for deduction under Section 194 of the IT Act.
- 5.3. Accordingly, it is clarified that the part of Director's remuneration which are declared as 'Salaries' in the books of a company and subjected to TDS under Section 192 of the IT Act, are not taxable being consideration for services by an employee to the employer in the course of or in relation to his employment in terms of Schedule III of the CGST Act, 2017.
- 5.4 It is further clarified that the part of employee Director's remuneration which is declared separately other than 'salaries' in the Company's accounts and subjected to TDS under Section 194J of the IT Act as *Fees for professional or Technical Services* shall be treated as consideration for providing services which are outside the scope of Schedule III of the CGST Act, and is therefore, taxable. Further, in terms of notification No. 13/2017 – Central Tax (Rate) dated 28.06.2017, the recipient of the said services i.e. the Company, is liable to discharge the applicable GST on it on reverse charge basis.

CIRCULAR NO. 141/11/2020 – GST DATED 24TH JUNE, 2020

Clarification in respect of various measures announced by the Government for providing relief to the taxpayers in view of spread of Novel Corona Virus (COVID-19) –Reg

Circular No. 136/06/2020-GST, dated 03.04.2020 was issued by the Board on the subject issue clarifying various issues relating to the measures announced by the Government providing relief to the taxpayers. The GST Council, in its 40th meeting held on 12.06.2020, recommended further relief to the taxpayers and accordingly, following notifications have been issued:

S. No.	Notification No.	Remarks
1.	Notification No.51/2020-Central Tax, date 24.06.2020.	Seeks to provide relief to taxpayers by reducing the rate of interest from 18% per annum to 9% per annum for specified period.
2.	Notification No.52/2020-Central Tax, dated 24.06.2020.	Seeks to provide relief to taxpayers by conditional waiver of late fee for delay in furnishing FORM GSTR-3B for specified period.

3.	Notification No.53/2020-Central Tax, dated 24.06.2020.	Seeks to provide relief to taxpayers by conditional waiver of late fee for delay in furnishing FORM GSTR-1 for specified period
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2. The above referred notifications have amended the parent notifications through which the relief from interest for late payment of GST and late fee for delay in furnishing of **FORM GSTR-3B / FORM GSTR-1** was provided for the tax periods of February, March and April, 2020. Accordingly, the clarifications issued vide Circular No. 136/06/2020-GST, dated 03.04.2020 stand modified to the extent as detailed in the succeeding paragraphs to incorporate the decisions of the 40th meeting of the GST Council. In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act") clarifies the issues detailed below:

Manner of calculation of interest for taxpayers having aggregate turnover above Rs. 5 Cr.

- 3.1 Vide notification No.31/2020- Central Tax, dated 03.04.2020, a conditional lower rate of interest was provided for various class of registered persons for the tax period of February, March and April, 2020. The same was clarified through Circular No. 136/06/2020-GST, dated 03.04.2020 (para 3, sl. No. 3, 4 and 5). It was clarified that in case the return for the said months are not furnished on or before the date mentioned in the notification No.31/2020- Central Tax, dated 03.04.2020, interest at 18% per annum shall be charged from the due date of return, till the date on which the return is filed.
- 3.2 The Government, vide notification no 51/2020- Central Tax, dated 24.06.2020 has removed the said condition. Accordingly, a lower rate of interest of NIL for first 15 days after the due date of filing return in **FORM GSTR-3B** and @ 9% thereafter till 24.06.2020 is notified. **After the specified date, normal rate of interest i.e. 18% per annum shall be charged for any further period of delay in furnishing of the returns.**
- 3.3 The calculation of interest in respect of this class of registered persons for delayed filing of return for the month of **March, 2020** (due date of filing being **20.04.2020**) is as illustrated in the Table below:

S. No.	Date of filing GSTR-3B	No. of days of delay	Interest
1.	02.05.2020	12	Zero Interest
2.	20.05.2020	30	Zero interest for 15 days, thereafter interest rate @9% p.a. for 15 days
3.	20.06.2020	61	Zero interest for 15 days, thereafter interest rate @9% p.a. for 46 days

4.	24.06.2020	65	Zero interest for 15 days, thereafter interest rate @9% p.a. for 50 days
5.	30.06.2020	71	Zero interest for 15 days, thereafter interest rate @9% p.a. for 50 days and interest rate @ 18% p.a. for 6 days

Manner of calculation of interest for taxpayers having aggregate turnover below Rs. 5 Cr.

4.1 For the taxpayers having aggregate turnover below Rs. 5 Crore, notification No.31/2020- Central Tax, dated 03.04.2020 provided a conditional NIL rate of interest for the tax period of February, March and April, 2020. The Government, vide notification no 52/2020- Central Tax, dated 24.06.2020 provided the NIL rate of interest till specified dates in the said notification and 9% per annum thereafter till 30th September, 2020. Similar relaxation of reduced rate of interest has been provided for the tax period of May, June and July 2020 also for the said class of registered persons having aggregate turnover below Rs. 5 Crore in the preceding financial year. **The notification, thus, provides NIL rate of interest till specified dates and after the specified dates lower rate of 9% would apply till 30th September 2020. After 30th September, 2020, normal rate of interest i.e. 18% per annum shall be charged for any further period of delay in furnishing of the returns.**

4.2 The calculation of interest in respect of this class of registered persons for delayed filing of return for the

month of **March, 2020** (for registered persons for whom the due date of filing was **22.04.2020**) and **June, 2020** (for registered persons for whom the due date of filing is **22.07.2020**) is as illustrated in the Table below:

Copy a table from the link given below (from page 3 of the link given below):-

https://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular_Refund_141_11_2020.pdf

Manner of calculation of late fee

5.1 Vide notification No. 32/2020- Central Tax, dated 03.04.2020, a conditional waiver of late fee was provided for the tax period of February, March and April, 2020, if the return in **FORM GSTR-3B** was filed by the date specified in the said notification. The same was clarified through Circular No. 136/06/2020-GST, dated 03.04.2020.

5.2 The Government, vide notification No. 52/2020- Central Tax, dated 24.06.2020 has provided the revised dates for conditional waiver of late fee for the months of February, March and April, 2020 and extended the same for the months of May, June and July, 2020 for the small taxpayers.

5.3 It is clarified that the waiver of late fee is conditional to filing the return of the said tax period by the dates specified in the said notification. **In case the returns in FORM GSTR3B for the said months are not furnished on or before the dates specified in the said notification, then late fee shall be payable from the due date of return, till the date on which the return is filed.**

ORDERS

ORDER NO. 01/2020 – CENTRAL TAX DATED 25TH JUNE, 2020

WHEREAS, sub-section (2) of section 29 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the said Act) provides for cancellation of registration by proper officer in situations described in clauses (a) to (e) as under: -

- a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or
- a person paying tax under section 10 has not furnished returns for three consecutive tax periods; or
- any registered person, other than a person specified in clause (b), has not furnished returns for a continuous period of six months; or
- any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration; or



(e) registration has been obtained by means of fraud, willful misstatement or suppression of facts:

Provided that the proper officer shall not cancel the registration without giving the person an opportunity of being heard.

AND WHEREAS, sub-section (1) of section 169 of the said Act provides for service of notice (opportunity of being heard); clauses (c) and (d) of said sub-section are as under: -

.....
(c) by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or

(d) by making it available on the common portal; or

.....
AND WHEREAS, sub-section (1) of section 30 of the said Act provides for application for revocation of cancellation of the registration within thirty days from the date of service of the cancellation order;

AND WHEREAS, sub-section (1) of section 107 of the said Act provides for filing appeal by any person aggrieved by any decision or order passed by an adjudicating authority within three months from the date on which the said decision or order is communicated to such person and sub-section (4) of section 107 of the said Act empowers the Appellate Authority that it may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months, allow it to be presented within a further period of one month;

AND WHEREAS, a large number of registrations have been cancelled under subsection (2) of section 29 of the said Act by the proper officer by serving notices as per clause (c) and clause (d) of sub-section (1) of section 169 of the said Act and the period of thirty days provided for application for revocation of cancellation order in sub-section (1) of section 30 of the said Act, the period for filing appeal under section (1) of section 107 of the said Act and also the period of condoning the delay provided in sub-section (4) of Section 107 of the said Act has elapsed; the registered persons whose registration have been cancelled under clause (b) or clause (c) of sub-section (2) of section 29 of the said Act are unable to get their cancellation of registration revoked despite having fulfilled all the requirements for revocation of cancellation of registration; the said Act being a new Act, these taxpayers could not apply for revocation of cancellation within the specified time period of thirty days from the date of service of the cancellation order, as a result whereof certain difficulties have arisen in giving effects to the provisions of sub-section (1) of section 30 of the said Act;

NOW, THEREFORE, in exercise of the powers conferred by section 172 of the Central Goods and Services Tax Act, 2017, the Central Government, on the recommendations of the Council, hereby makes the following Order, to remove the difficulties, namely: —

1. **Short title.-** This Order may be called the Central Goods and Services Tax (Removal of Difficulties) Order, 2020.-
2. For the removal of difficulties, it is hereby clarified that for the purpose of calculating the period of thirty days for filing application for revocation of cancellation of registration under sub-section (1) of section 30 of the Act for those registered persons who were served notice under clause (b) or clause (c) of sub-section (2) of section 29 in the manner as provided in clause (c) or clause (d) of sub-section (1) of section 169 and where cancellation order was passed up to 12th June, 2020, the later of the following dates shall be considered:-
 - a) Date of service of the said cancellation order; or
 - b) 31st day of August, 2020.

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FREQUENTLY ASKED QUESTIONS ON PROFESSIONAL AND OTHER MISCONDUCT IN RELATION TO COMPANY SECRETARIES UNDER THE FIRST SCHEDULE TO THE COMPANY SECRETARIES ACT, 1980

Q1. What is “professional and other misconduct” in relation to Company Secretaries?

Ans. The expression “professional and other misconduct” in relation to Company Secretaries as defined under section 22 of the Company Secretaries Act, 1980 shall be deemed to include any act or omission provided in any of the Schedules i.e. First and Second Schedule to the Company Secretaries Act, 1980, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (1) of section 21 of the Company Secretaries Act, 1980 to inquire into the conduct of any member of the Institute under any other circumstances.

Q2. How many Schedules are there in the Company Secretaries Act, 1980?

Ans. There are two Schedules, First and Second Schedule to the Company Secretaries Act, 1980 providing acts and/or omissions which amounts to professional and other misconduct in relation to Company Secretaries.

First Schedule is divided into four parts and Second Schedule is divided into three parts.

Q3. Which parts of First and Second Schedule to the Company Secretaries Act, 1980 are applicable to Company Secretary in Practice?

Ans. Part I of the First Schedule containing 11 items and Part I of the Second Schedule containing 10 items indicating the acts and/or omissions which amount to professional misconduct applicable to Company Secretaries in Practice.

Q4. Which parts of First and Second Schedule to the Company Secretaries Act, 1980 are applicable to Company Secretary in service?

Ans. Parts II of the First Schedule containing 2 items are professional misconducts applicable to members of the Institute in service.

Q5. Which parts of First and Second Schedule to the Company Secretaries Act, 1980 are applicable to all members of the Institute generally?

Ans. Part III of the First Schedule containing 3 items and Part II of the Second Schedule containing 4 items, provide acts and/or omissions which amount to professional misconduct applicable to members of the Institute generally.

Part IV of First Schedule containing 2 items and Part III of the Second Schedule containing 1 item deals with other misconduct in relation to members of the Institute generally.

Q6. Who are the authorities to take action on matters of professional and other misconduct in relation to Company Secretaries?

Ans. Under Section 21 of the Company Secretaries Act, 1980, the Council has established a Disciplinary Directorate by notification, headed by Director (Discipline), and other employees for making investigations in respect of any information or complaint received by it.

The Council constitutes a Board of Discipline under Section 21A and a Disciplinary Committee under Section 21B of the Company Secretaries Act, 1980 for taking action against members of the Institute, if find guilty of professional and other misconduct mentioned in the First Schedule and Second Schedule or both First and Second Schedule to the Company Secretaries Act, 1980, respectively.

Q7. What is the procedure to be followed by the Board of Discipline in dealing with the complaints of professional or other misconduct against the members of the Institute?

Ans. Where the Director (Discipline) is of opinion that a member is guilty of any professional or other misconduct mentioned in the First Schedule, he shall place the matter before the Board of Discipline. It shall follow summary disposal procedure in dealing with all the cases before it in accordance with the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

Q8. What Orders can be passed by the Board of Discipline for finding member of the ICSI guilty of professional or other misconduct mentioned in the First Schedule to the Company Secretaries Act, 1980?

Ans. The Board of Discipline shall follow summary disposal procedure in dealing with all the cases before it. Where the Board of Discipline is of the opinion that a member is guilty of a professional or other misconduct mentioned in the First Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:—

- (a) reprimand the member;
- (b) remove the name of the member from the Register up to a period of three months;
- (c) impose such fine as it may think fit which may extend to rupees one lakh.

Q.9 What is the procedure to be followed where the Director (Discipline) is prima facie of the opinion that there is no prima facie case of Professional or other Misconduct against a member?

Ans. The Director (Discipline) shall also submit before the Board of Discipline all information and complaints where he is of the opinion that there is no prima facie case of Professional or other Misconduct against the member of the Institute. The Board of Discipline may, if it agrees with the said opinion of the Director (Discipline) close the matter or in case of disagreement, may advise the Director (Discipline) to further investigate the matter.

Q10. Can a Company Secretary in Practice allow any other person to practice in his name as a Company Secretary?

Ans. No, as per Item (1) of Part I of First Schedule, a Company Secretary in Practice cannot allow any other person to practice in his name as a Company Secretary, unless such person is also a Company Secretary in Practice and is in partnership with or employed by him.

Q11. Can a Company Secretary in Practice shares his profits with any person?

Ans. No, as per Item (2) of Part I of First Schedule, a Company Secretary in Practice cannot pay or allow or agree to pay or allow, any share, commission or brokerage in the fees or profits of his professional work to any person who is not a member of the Institute or a partner or a retired partner or the legal representative of a deceased partner, or a member of any other professional body or a person having qualifications prescribed under Regulation 168A of the Company Secretaries Regulations, 1982.

Q12. Can a Company Secretary in Practice accept any part of profits of any other person?

Ans. No, as per Item (3) of Part I of First Schedule, a Company Secretary in Practice cannot accept or agree to accept any part of the profits of professional work of a person who is not a member of the Institute or as prescribed by the Council under Regulation 168A of the Company Secretaries Regulations, 1982.

Q13. Can a Company Secretary in Practice enter into partnership with any person?

Ans. No, as per Item (4) of Part I of First Schedule, a Company Secretary in Practice cannot enter into partnership with any person other than a Company Secretary in Practice or a member of any other professional body having such qualifications as may be prescribed by the Council under Regulation 168B or a person entitled under Section 4(1) (e) of the Company Secretaries Act, 1980.

Q14. Can a Company Secretary in Practice secure professional work through any means?

Ans. No, as per Item (5) of Part I of First Schedule, a Company Secretary in Practice cannot secure professional work by unethical means or by means which are not open to a Company Secretary or through the services of a person who is not his employee or partner or as may be prescribed by the Council from time to time.

Q15. Can a Company Secretary in Practice issue an Advertisement?

Ans. Yes, a Company Secretary in Practice can issue advertisement through a write up setting out the services provided by him within the parameters of the guidelines issued by the Council of the Institute from time to time.

Q16. Can a Company Secretary in Practice launch his own website?

Ans. Yes, a Company Secretary in Practice can launch his own website within the parameters of the guidelines issued by the Council of the Institute from time to time.

Q17. Can a Company Secretary in Practice solicit clients or professional work through any means?

Ans. No, as per Item (6) of Part I of First Schedule, a Company Secretary in Practice cannot solicits clients or professional work either directly or indirectly, through circular, advertisement, personal communication/ interview or by any other means. However, a Company Secretary in Practice can apply or request or invite or secure professional work from another Company Secretary in Practice.

Q18. Can a Company Secretary in Practice respond to tenders or enquiries issued by various users of professional services or organizations?

Ans. Yes, as per Item (6) of Part I of First Schedule, a Company Secretary in Practice is also allowed to secure professional work as a resultant of responding to tenders or enquiries issued by various users of professional services or organizations from time to time.

Q19. Can a Company Secretary in Practice advertise his professional attainments?

Ans. No, as per Item (7) of Part I of First Schedule, a Company Secretary in Practice cannot advertise his professional attainments or services except through a write up setting out the services provided by him or his firm and particulars of his firm subject to such guidelines as may be issued by the Council from time to time.

Q20. Can a Company Secretary in Practice uses designation other than 'Company Secretary'.

Ans. No, as per Item (7) of Part I of First Schedule, a Company Secretary in Practice cannot use any designation or expression other than Company Secretary on professional documents, visiting cards, letterheads or sign boards. Use of degree of University established by law in India or recognized by the Central Government or

use of a title indicating the membership of the Institute of Company Secretaries of India or any other institution recognized by the Central Government or recognized by the Council is allowed.

Q21. Can a Company Secretary in Practice use designation of “Practising Company Secretary”, ‘Company Secretary in whole-time practice’?”

Ans. The use of designation “Practising Company Secretary”, ‘Company Secretary in whole-time practice’, etc. is allowed.

Q22. Is there any need to make communication before accepting the position as a Company Secretary in Practice previously held by another Company Secretary in Practice?

Ans. Yes, as per Item (8) of Part I of First Schedule, it is mandatory to make communication in writing before accepting the position as a Company Secretary in Practice previously held by another Company Secretary in Practice.

Q23. Is there any prerequisite seeking no objection certificate before accepting any assignment?

Ans. No, seeking no objection or consent of the previous incumbent is not a prerequisite of accepting any assignment.

Q24. What should be the mode of prior communication with the previous incumbent before accepting any assignment?

Ans. Prior communication in writing with the previous incumbent should be through a registered post/speed post or by hand with acknowledgement, in order to have a positive evidence of having a complete and effective communication. Mere posting of letter is not sufficient to comply with the requirements of this item, but acknowledgment by the addressee of the same is essential.

Q25. Whether prior communication with the previous incumbent be made through email before accepting any assignment.

Ans. Yes, prior communication through email can be made with the previous incumbent before accepting any assignment, provided that the recipient has acknowledged the receipt of such email.

Q26. Can a Company Secretary in Practice charge professional fees based upon findings or result of any assignment?

Ans. No, as per Item (9) of Part I of First Schedule, a Company Secretary in Practice cannot charge or offers to charge or accept or offers to accept, fees based on percentage of profits, or which are contingent upon the findings or result of such employment, except as permitted under any regulations made under the Company Secretaries Act, 1980.

Q27. Can a Company Secretary in Practice engage himself in any other business or occupation?

Ans. No, as per Item (10) of Part I of First Schedule, a Company Secretary in Practice cannot engage himself in any business or occupation other than the profession of Company Secretary in Practice unless permitted by the Council so to engage.

Q28. What are the other businesses or occupation engagement to which by a Company Secretary in Practice has been generally permitted by the Council?

Ans. Pursuant to Regulation 168 (1) of the Regulations, the Council has passed a resolution generally permitting a Company Secretary in Practice to engage himself in the following other business or occupation:

- a) Private tutorship.
- b) Authorship of books and articles.
- c) Holding of Life Insurance Agency Licence for the limited purpose of getting renewal commission.
- d) Holding of public elective offices such as M.P., M.L.A., M.L.C.
- e) Honorary office-bearership of charitable, educational or other non-commercial organisations.
- f) Acting as Justice of Peace, Special Executive Magistrate and the like.
- g) Teaching assignment under the Coaching Organisation of the Institute or any other organisation, so long as the hours during which a member in practice is so engaged in teaching do not exceed average four hours in a day irrespective of the manner in which such assignment is described or the remuneration is receivable (whether by way of fixed amount or on the basis of any time scale of pay or in any other manner) by the member in practice for such assignment.
- h) Valuation of papers, acting as a paper-setter, head examiner or a moderator, for any examination.
- i) Editorship of professional journals.
- j) Acting as ISO lead auditor.
- k) Providing Risk Management Services for non-life insurance policies except marketing or procuring of policies.
- l) Acting as Recovery Consultant in the Banking Sector.
- m) Becoming non-executive director/ promoter/ promoter director/ subscriber to the Memorandum and Articles of Association of a company the objects of which include areas, which fall within the scope of the profession of Company Secretaries irrespective of whether or not the practising member holds substantial interest in that company.

- n) Becoming non-executive director/promoter/promoter director/ subscriber to the Memorandum and Articles of Association of a company which is engaged in any other business or occupation provided that the practising member does not hold substantial interest in the company.

Q29. What are the other businesses or occupation engagement to which a Company Secretary in Practice requires specific permission of the Council?

Ans. Members of the Institute in practice may engage in the following categories of business or occupation, after obtaining the specific and prior approval of the Executive Committee of the Council in each case:

- Interest or association in family business concerns provided that the member does not hold substantial interest in such concerns.
- Interest in agricultural and allied activities carried on with the help, if required, of hired labour.
- Editorship of journals other than professional journals.

However, in cases of permission to be granted specifically, the Council may refuse permission in individual cases.

Further no specific permission is required by a Company Secretary in Practice to act as a secretary, trustee, executor, administrator, arbitrator, receiver, appraiser, valuer, internal auditor, management auditor, management consultant or as a representative on financial matters including taxation and may take up an appointment that may be made by the Central or any State Government, Court of Law, Labour Tribunals, or any other statutory authority as per Regulation 168 (2) of the Regulations.

Q30. Can a Company Secretary in Practice allow any other person to sign on his behalf?

Ans. No, as per Item (11) of Part I of First Schedule, a Company Secretary in Practice cannot allow a person who is not a Company Secretary in Practice or a member who is not his partner, to sign anything on his behalf or on behalf of his firm, which he is required to certify as a Company Secretary or any other statements relating to it.

It would be the exclusive duty and obligation of PCS to prevent any unauthorized use of his Digital signature.

Q31. Can a member in employment shares emoluments of the employment with any person?

Ans. No, a member of the Institute in employment cannot share his emoluments of the employment undertaken by him, with any other person not even a member of the Institute.

Both direct and indirect sharing of the emoluments is prohibited under Item (1) of Part II of the First Schedule to the Company Secretaries, Act, 1980.

However, under Part I of the First Schedule, a member in practice can share the fee, commission or brokerage

or profits with any other member of the Institute who is his partner.

Q32. Can a member in employment accept any secret benefit from employment?

Ans. No, a member of the Institute in service cannot accept or agrees to accept any secret benefit from the employment, such as any part of fees, profits or gains from a lawyer, a Company Secretary or broker engaged by such employer, by way of commission or gratification. It is prohibited under Item (2) of Part II of the First Schedule to the Company Secretaries, Act, 1980.

Q33. Who can act as Fellow of the Institute?

Ans. A member, whose name has been enrolled in the Register of Members of the Institute as Fellow member, can only act as a Fellow member of the Institute.

Item (1) of Part III of the First Schedule to the Company Secretaries Act, 1980 prohibits a member, whether in practice or not, to act as a Fellow Member of the Institute if he is not a Fellow member.

Q34. Are the members bound to supply the information called for or to comply with the requirements asked for by the Institute and its various authorities?

Ans. Yes, it is the duty of a member, whether in practice or not, to supply information called for or to supply the requirements as asked for, by the Institute, Council or any of its Committee and other authorities such as Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority as constituted under the Company Secretaries Act, 1980.

Non-compliance of the same would amount to professional misconduct under Item (2) of Part III of the First Schedule to the Company Secretaries Act, 1980.

Q35. Can a member gives information knowing it to be false, while inviting professional work from another Company Secretary or while responding to tenders or enquiries or while advertising through a write up?

Ans. No, a member of the Institute, whether in practice or not, cannot give any information which he knows it to be false, while inviting professional work from another Company Secretary or while responding to tenders or enquiries or while advertising through a write up, or anything as provided for in items (6) and (7) of Part I of the First Schedule to the Company Secretaries Act, 1980, as the same would amounts to professional misconduct under Item (3) of Part III of the First Schedule to the Company Secretaries Act, 1980.

Q36. What happens if a member of the Institute is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term not exceeding six months?

Ans. A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, under Item (1) of Part IV of the First Schedule to the Company Secretaries Act, 1980, if he is held guilty by any civil or

criminal court for an offence which is punishable with imprisonment for a term not exceeding six months.

Q37. What happens if as a result of his action, a member of the Institute brings disrepute to the profession or the Institute?

Ans. If a member of the Institute, whether in practice or not, in the opinion of the Council brings disrepute to the profession or the Institute, as a result of his act or omission, whether the same relates to his professional work or not, the member shall be deemed to be guilty of other misconduct under Item (2) of Part IV of the First Schedule to the Company Secretaries Act, 1980.

CASE STUDY 1

- Mr. X, the Complainant alleged that Mr. Y the Respondent accepted position as a Company Secretary in Practice in a Company namely M/s. ABC Limited and certified e-Form MGT-7 (Annual Return) for the Financial Year 2017-18 without first communicating with the Complainant in writing as the position was previously held by him.
- The Board of Discipline after considering the prima-facie opinion of the Director (Discipline) agreed that the Respondent is "Guilty" of professional misconduct under Item (8) of Part I of First Schedule to the Company Secretaries Act, 1980.
- The Board of Discipline after giving an opportunity of being heard to the Respondent passed an Order of REPRIMAND against the Respondent.

CASE STUDY 2

- Mr. A, the Complainant alleged that Mr. B the Respondent accepted assignment of issuing Compliance Certificate for M/s. A Pvt. Ltd. and M/s. B Pvt. Ltd. for the Financial Year ended on 31st March 2014 without first communicating with the Complainant in writing as the position was previously held by him.
- The Board of Discipline after considering the prima-facie opinion of Director (Discipline) agreed that the Respondent is "Guilty" of professional misconduct under Item (8) of Part I of First Schedule to the Company Secretaries Act, 1980.
- The Board of Discipline after giving an opportunity of being heard to the Respondent passed an order of REPRIMAND against the Respondent.

CASE STUDY 3

- A Complaint of professional or other misconduct was filed in Form I by Mr. M against Mr. P under section 21 of the Company Secretaries Act, 1980.
- The Complainant has inter-alia alleged that as the Respondent had accepted the assignment of certification of the Form MGT 7 and a certificate in Form MGT 8 of M/s. D Limited for the year 2016-17 without first communicating with the Complainant who was doing the same for the previous years for the said company.

- The Director (Discipline) is prima-facie of the opinion that the Respondent is "Guilty" of professional misconduct under Item (8) of Part I of First Schedule to the Company Secretaries Act, 1980 as the Respondent had accepted the assignment of certification of the Annual Return of M/s. D Limited for the year 2016-17 without first communicating with the Complainant who had certified the same for the previous year for the said company.
- The Board of Discipline held the Respondent "Guilty" of professional misconduct under Item (8) of Part I of First Schedule to the Company Secretaries Act, 1980 and decided to grant an opportunity of being heard before deciding the quantum of punishment.
- Accordingly, the Board decides not to permit withdrawal of complaint and passed an Order of REPRIMAND against the Respondent.

CASE STUDY 4

- Mr X and M/s Y had sent separate Information alleging that Mr Z, the Respondent had served as Company Secretary in two companies M/s ABC Ltd and M/s CED (I) Ltd simultaneously. The Director (Discipline) opined to refer the matter to the Council of the Institute for its opinion whether the alleged act of the Respondent has brought disrepute to the profession and the Institute in terms of Item (2) of Part (IV) of the First Schedule to the Company Secretaries Act 1980. The Board of Discipline referred matter to the Council on which Council opined in affirmative. The matter was adjudicated by the Board of Discipline.
- The Respondent appeared before Board of Discipline and admitted that he had worked simultaneously in two companies and pleaded guilty for the same.
- The Board of Discipline passed an Order against the Respondent imposing a fine of Rs. 30000/- and removal of name of the Respondent for a period of 3 (three) months from the Register of Members.

CASE STUDY 5

- The Complainant has inter-alia alleged that Mr. A the Respondent has certified Forms AOC-4, MGT-7 and MGT-8 for the financial year 2016-17 of M/S. C Pvt. Ltd. without informing to the Complainant, which amounts to Professional Misconduct under item (8) of part I of the First Schedule to the Company Secretaries Act, 1980. The Respondent on the other hand stated that he was not aware that the Company had appointed the Complainant in previous year for certification of forms.
- The Board of Discipline observed that the Respondent is Guilty under Item (8) of part I of the First Schedule to the Company Secretaries Act, 1980 for not communicated with the Complainant prior to certification of Forms MGT-7 & MGT-8 for the financial year 2016-17 to M/S. C Pvt. Ltd. The Respondent pleaded guilty before the Board of Discipline. Accordingly, the Board of Discipline passed an Order of REPRIMAND against the Respondent. 

Scheme for Facilitating Start-Ups Intellectual Property Protection

INTRODUCTION

Intellectual Property Rights (IPRs) are emerging as a strategic business tool for any business organization to enhance industrial competitiveness. Startups, with limited resources and manpower, can sustain in this highly competitive world only through continuous growth and development-oriented innovations; for this, it is equally crucial that they protect their IPRs.

To promote awareness and adoption of IPRs by Startups and facilitate them in protecting and commercialising the IPRs, the scheme for Startups Intellectual Property Protection (“SIPP or Scheme”) is envisaged to facilitate protection of Patents, Trademark and Designs of innovative and interested Startups. The scheme is inclined to nurture and mentor innovative and emerging technologies among Startups and assist them in protecting and commercialize it by providing them access to high-quality IP services and resources.

The Scheme was run on a pilot basis initially and was in force up to March 31, 2020. The Office of Controller General Patents, Designs and Trademarks vide public notice¹ dated April 30, 2020 extended the scheme for another period of 3 (three) years. The salient features of the extended scheme² are as below:

WHO CAN APPLY?

- Any startup recognised in terms of the notification GSR 127(E)³ published in the Gazette of India dated February 19, 2019, as may be amended from time to time.
- Self-declaration shall be required to be given startups that they have not availed funds under any other Government scheme for the purpose of paying the facilitator/patent agent/trademark agent for filing and prosecuting their IP application.

PERIOD OF SCHEME

The scheme shall be applicable for a period of 3 years w.e.f. 1st April 2020.

ROLE OF STARTUP INDIA IN IPR SUPPORT

Implementation of Scheme: For effective implementation of the scheme, a list of facilitators has been empanelled by the Controller General of Patents, Designs and Trade Marks (“CGPDTM”) which will help startups in preparing and filing of the application under the Scheme. A startup willing to file application under the Scheme can directly contact any of the facilitators available. The updated list of facilitators can be viewed at <http://www.ipindia.nic.in/Facilitators-Patents.htm>

Fees: The SSIP scheme provided that the facilitator shall not charge anything from the startups. The facilitators shall be paid the fees directly by the Central government through the office of the CGPDTM. However, the cost of the statutory fees payable for each patent, trademark or design applied for by a startup shall be borne by the Startup itself.

FUNCTIONS AND DUTIES OF THE FACILITATORS

- Providing general advisory on different intellectual property rights to Startups on pro bono basis
- Providing information on protecting and promoting IPRs to Start-Ups in other countries on pro bono basis
- Providing assistance in filing and disposal of the IP applications related to patents, trademarks and design under relevant acts at the national IP offices under the CGPDTM
- Drafting complete/ provisional specifications for the inventions of Start-Ups
- Preparing and filing responses to examination reports and other queries, notices or letters by the IP office
- Appearing on behalf of Start-Up at hearings as may be scheduled
- Contesting opposition, if any, by other parties, and
- Ensuring final disposal of the IPR Application.

WHO CAN BE A FACILITATOR?

- Any Patent Agent registered with the CGPDTM.
- Any Trademark Agent registered with the CGPDTM.
- Any Advocate as defined under The Advocates Act, 1961 who is entitled to practice law as per the rules laid down by Bar Council of India from time to time, who is well-versed with the provisions of the relevant Acts and Rules, and is actively involved in filing and disposal of applications for trademarks.
- A government department/ organization/agency or CPSU (like TIFAC, NRDC, BIRAC, MeitY, CSIR, Patent Information Centres (PICs) through an authorised representative; and Technology and Innovation Centres (TISCs) in accordance with DPIIT Notification No. 5/1/2017- CIPAM, dated 19-11-2018.

Startup India has further curated a list of facilitators for Patents which can be viewed at <https://www.startupindia.gov.in/content/sih/en/facilitator.html>

¹ http://www.ipindia.nic.in/writereaddata/Portal/News/680_1_PUBLIC_NOTICE.pdf
² http://www.ipindia.nic.in/writereaddata/Portal/News/680_1_SIPP_extension_as_approved_by_SIIT.pdf
³ <https://www.startupindia.gov.in/content/dam/invest-india/Templates/public/198117.pdf>

US Securities Exchange Commission (SEC) Statements on Public Company Disclosure and Financial Reporting



On April 3, 2020, Sagar Teotia, the Chief Accountant of the SEC, issued a statement noting that the SEC's Office of the Chief Accountant, along with the Commission and other Divisions and Offices of the SEC, is closely monitoring the impact of issues raised by COVID-19 on investors and global capital markets. These statements emphasize the importance of high-quality financial reporting and a focus on meaningful forward-looking disclosures during the COVID-19 pandemic.

According to the statement, the Office of Chief Accountant (OCA) is actively engaged with the Financial Accounting Standards Board ("FASB") in support of FASB's efforts to address the impacts of COVID-19. Further, the statement notes that the Office of Chief Accountant has consistently not objected to well-reasoned judgments that entities have made when making significant judgments and estimates, and they will continue to apply this perspective. The statement indicates that some of the accounting areas that may involve significant judgments and estimates in light of the evolving status of COVID-19 include: (i) fair value and impairment considerations; (ii) leases; (iii) debt modifications or restructurings; (iv) hedging; (v) revenue recognition; (vi) income taxes; (vii) going concern; (viii) subsequent events; and (ix) adoption of new accounting standards (e.g., the new credit losses standard). The Office of Chief Accountant stresses the importance of required disclosures of judgments and estimates in these and other areas.

It was also stated that OCA has also been actively engaged and working collaboratively and constructively with the Public Company Accounting Oversight Board (PCAOB) to address emerging issues relating to COVID-19. Engaging with stakeholders and seeking feedback has long been a high priority for OCA. In an effort to promote high-quality financial reporting, OCA meet with participants in every phase of the financial reporting system to listen to stakeholder views, understand emerging issues and risks, and promote high-quality financial reporting.

During this time, OCA continues to engage with stakeholders both domestically and internationally. For example, in late 2019 and early 2020, OCA conducted separate meetings with representatives from the four largest global accounting firms to discuss each of the firms' efforts to advance audit quality in emerging markets, including China, the largest emerging market economy. 

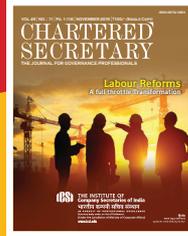
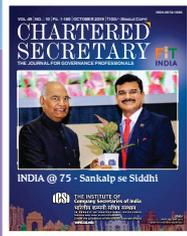
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<https://www.mofo.com/resources/insights/200412-covid-19-sec-statements-on-disclosure-and-reporting.html>

<https://www.sec.gov/news/public-statement/statement-teotia-financial-reporting-covid-19-2020-04-03>

CHARTERED SECRETARY

Advertisement Tariff



(With Effect from September 2018)

BACK COVER (COLOURED)			COVER II/III (COLOURED)		
Non – Appointment			Non – Appointment		
Per Insertion		₹1,00,000	Per Insertion		₹ 70,000
4 Insertions		₹ 3,60,000	4 Insertions		₹2,52,000
6 Insertions		₹ 5,28,000	6 Insertions		₹ 3,69,000
12 Insertions		₹ 10,20,000	12 Insertions		₹ 7,14,000
FULL PAGE (COLOURED)			HALF PAGE (COLOURED)		
	Non – Appointment	Appointment		Non – Appointment	Appointment
Per Insertion	₹ 50,000	₹ 15,000	Per Insertion	₹ 25,000	₹ 7,500
4 Insertions	₹ 1,80,000	₹ 54,000	4 Insertions	₹ 90,000	₹ 27,000
6 Insertions	₹ 2,64,000	₹ 79,200	6 Insertions	₹ 1,32,000	₹ 39,600
12 Insertions	₹ 5,10,000	₹ 1,53,000	12 Insertions	₹ 2,55,000	₹ 76,500
PANEL (QTR PAGE) (COLOURED)			EXTRA BOX NO. CHARGES		
Per Insertion	₹15,500	₹4,500	For 'Situation Wanted' ads		100
(Subject to availability of space)			For Others		200
MECHANICAL DATA					
Full Page - 18X24 cm		Half Page - 9X24 cm or 18X12 cm		Quarter Page - 9X12 cm	

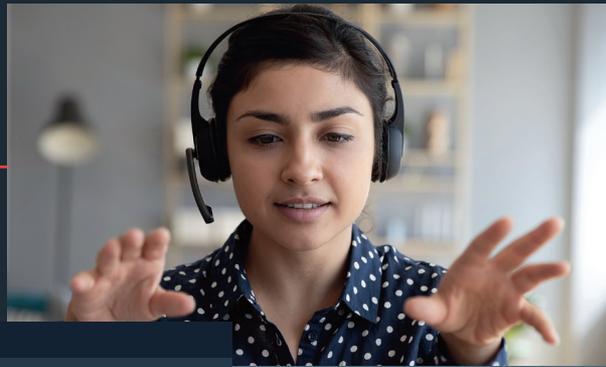
- ♦ The Institute reserves the right not to accept order for any particular advertisement.
- ♦ The Journal is published in the 1st week of every month and the advertisement material should be sent in the form of typed manuscript or art pull or open file CD before 20th of any month for inclusion in the next month's issue.

For further information
write to:
The Editor
CHARTERED SECRETARY



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Spl.
Attraction
30%
rebate on the total
billing for 36 insertions
in 3 years in any
category

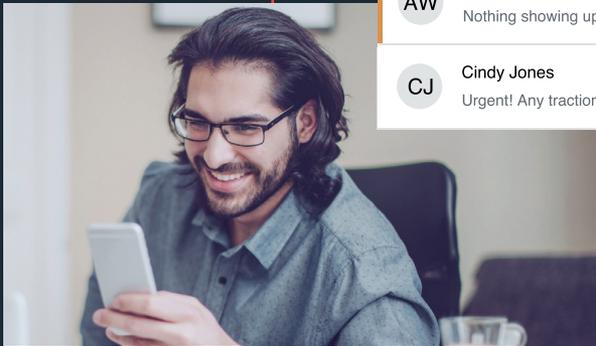


☰ Zep Co. Ltd
Conversations

👤 Cindy Jones, Alex Walker... 8:38 PM
Jump on a quick video call?

AW Alex Walker 8:34 PM
Nothing showing up on the News Analytics

CJ Cindy Jones 8:32PM
Urgent! Any traction on the latest report?



Alex Walker

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