



# STUDENT PROFESSIONALS TODAY



Volume 2 | Issue 3 | March 2018 | Pages 1-20 | Price Rs. 20



An Initiative by :



**THE INSTITUTE OF  
Company Secretaries of India**

IN PURSUIT OF PROFESSIONAL EXCELLENCE  
Statutory body under an Act of Parliament

# CONTENTS

<b>MESSAGE FROM THE PRESIDENT</b>	<b>3</b>
-----------------------------------	----------

## ARTICLES

Concept of Small Company	4
Independent Director under Companies Act, 2013	6
Loans to Directors and etc. : A Simplified Process under Company Act, 2013	9
Enhancing Your Inner Powers	11

<b>KNOWLEDGE UPDATE</b>	<b>15</b>
-------------------------	-----------

## INVITATION FOR CONTRIBUTING AN ARTICLE

Readers are invited to contribute article/s for the Journal. The article should be on a topic of current relevance on Corporate Law, Tax Law, or on any other matter or issue relating to Economic or Commercial Laws. The article should be original and of around 7-8 pages in word file (approx. 2500 words). Send your articles at email id : [articles@vidhimaan.com](mailto:articles@vidhimaan.com) along with your student registration number. The shortlisted articles shall be published in the Journal.

Printed and Published by B P Bhargava on behalf of Vidhimaan Publishers Pvt. Ltd.

Printed at Delhi Press Samachar Patra Pvt. Ltd., 36-A, UPSIDC, Site-4, Sahibabad and published at 158 Basant Enclave, Palam Road, New Delhi 110057.

Editor : B P Bhargava.

Correspondence:

Send your articles at email id : [articles@vidhimaan.com](mailto:articles@vidhimaan.com)

For non receipt of issue email id : [notreceived@vidhimaan.com](mailto:notreceived@vidhimaan.com)

For any other issue email id : [info@vidhimaan.com](mailto:info@vidhimaan.com)

Annual subscription price Rs.750/- (January - December, 2018), send your cheque in favour of Vidhimaan Publishers Private Limited, at Krishna Law House, 128, Municipal Market, Super Bazar Compound, Connaught Place, New Delhi-110001. Tel.: 011-23417866, 64566061

*Disclaimer: The views and opinions expressed in the Journal are those of the author alone and should not be taken to reflect either the views or the policy of the organisation to which they belong to or employed, publisher, editor or the Institute of Company Secretaries of India (ICSI). The publisher, editor/s, authors and ICSI will not at all be responsible in respect of anything and the consequences of anything done or omitted to be done by any person in reliance upon the contents of this journal. This disclaimer applies to all, whether subscriber to the journal or not. Material in this Journal should not be reproduced whether in part or whole without the written consent of the publisher.*

© Copyright with the Institute of Company Secretaries of India



## MESSAGE FROM THE PRESIDENT

*Woman is the companion of man, gifted with equal mental capacity. There is no occasion for women to consider themselves subordinate or inferior to men.*

*~ Mahatma Gandhi*

My Dear Students,

*At the outset, let me take this opportunity to extend my heartiest compliments to the candidates for sailing successfully in the Company Secretaryship Examinations held in December, 2017!!!*

Penning down this message, I would like to share that the month of March, 2018 holds greater significance for the Institute of Company Secretaries of India for reasons more than one. While on one hand, the Institute proudly celebrates the International Women's Day on 8th March at a Pan-India level, with all the Regional Offices and Chapters having organized plethora of events to commemorate this fabulous day of women achievements and womanhood; a second reason that gives the Institute its moments of self-appreciation and applaud is the introduction of the New Syllabus of the Company Secretaryship Course. Highly appreciated by Shri Prakash Javadekar, Hon'ble Minister of Human Resource Development for having encompassed all the recent developments and significant arenas, the new syllabus is expected to open wider doors of spreading the wave of professionalism and success for the Company Secretaries of tomorrow.

Remigrating to the celebrations on account of International Women's Day, gender parity has been the frontrunner in terms of issues being encountered globally. In the Indian scenario too, the India Inc. faces significant challenges when it comes to appointment of women professionals in senior positions. However, thankfully the Institute of Company Secretaries of India has been forever successful in keeping this issue at bay when it comes to gender parity amongst this league of professionals. Yet, empowerment of women, lending them voice in the India Inc. is not just the need of the hour but a more than pressing dire necessity. To quote the thoughts of the Father of the nation, ***"If by strength is meant moral power, then woman is immeasurably man's superior. If non-violence is the law of our being, the future is with women"***.

The above words suffice to prove that if sustainable success is to be achieved in India Inc., the women brigade has to while grabbing the bull by its horns take charge of significant designations and management positions.

Friends, I am sure that as an elite profession in the field of governance, we are and would keep serving our excellence in empowering our nation and our profession with the equal share of empowering the women in the society.

*Wishing you a Happy and Empowering International Women's Day!*

Best Wishes

**CS Makarand Lele**

President



## Concept of Small Company

**This article aims to provide an overview of small company under the perspectives of Companies Act, 2013.**

*Dharmendra Sharma, Practising Company Secretary, Delhi*

*Email ID : dharmendra.sharma@outlook.com*

### Introduction

As recommended by the Dr. J J Irani Committee, the concept of small companies has been introduced in the Companies Act, 2013. The recommendation of the Irani committee in this regard was as under:

“The Committee sees no reason why small companies should suffer the consequences of regulation that may be designed to ensure balancing of interests of stakeholders of large, widely held corporates. Company law should enable simplified decision-making procedures by relieving such companies from select statutory internal administrative procedures. Such companies should also be subjected to reduced financial reporting and audit requirements and simplified capital maintenance regimes. Essentially the regime for small companies should enable them to achieve transparency at a low cost through simplified requirements. Such a framework may be applied to small companies through exemptions, consolidated in the form of a Schedule to the Act.”

The concept of ‘Small Company’ has been introduced for the first time by the Companies Act, 2013 (the ‘Act’). A classification of a private company into a small company is based on its size, i.e., paid up capital and turnover. The Act provides certain relief/exemptions to these companies. The Act also provides for a simplified scheme of arrangement between two small companies, without requiring the approval of the Tribunal, i.e., with the approval of Central Government.

### Definition

Clause (85) of section 2 defines a small company to mean – a company, other than a public company, (i) paid-up share capital of which does not exceed Rs. 50 lakh or such higher amount as may be prescribed which shall not be more than Rs. 5 crore; or (ii) turnover of which as per its last profit and loss account does not exceed Rs. 2 crore or such higher amount as may be prescribed which shall not be more than Rs. 20 crore. However, (i) a holding company or a subsidiary company, (ii) a company registered under section 8, and (iii) a company or body corporate governed by any special Act have been excluded from the purview of a small company.

Clause (XII) of section 2 of the Companies (Amendment) Act, 2017 has increased the monetary limits from Rs. 5 crore to Rs. 10 crore in the case of capital and Rs. 20 crore increased to Rs. 100 crore in the case of turnover. Even though both the holding company and subsidiary company may fulfill the capital or turnover requirement of a small company, they will still fall outside the purview of small company and accordingly the benefits which are available to a small company cannot be applied to a company which is holding or subsidiary company. To put it simply:

- Only a private company can be classified as a small company.
- Holding company, subsidiary company, charitable company and company governed



by any Special Act cannot be classified as a small company.

- For a small company, either the paid-up capital should not exceed Rs. 50 lakh or the turnover as per last statement of profit and loss should not exceed Rs. 2 crore.
- The status of a company as “small company” may change from year to year. Thus, the benefits which are available during a particular year may stand withdrawn in the next year and become available again in the subsequent year.

### Privileges/Exemptions Available to a Small Company

The privileges/exemptions available to a small company are same as that available to a one-person company, but not all privileges available to a one-person company are available to a small company. Exemptions available to a small company are as follows:

- **Signatures in the annual returns** – Company secretary (CS) or when there is no CS, a single director of the company can sign the annual returns of the Company. But since a small company need not have a CS, the director can sign the annual returns.
- **Board meetings** – Small company may hold only two board meetings in a year. There should be a minimum gap of 90 days between the two meetings and they can be held in each half of the calendar year.
- **Financial statement** – Small company is not required to include the cash flow statement as a part of its financial statement.
- **Auditor rotation** – The mandatory rotation of the auditor or the maximum tenure of an auditor being 5 years in the case of an individual and 10 years in the case of a firm of auditors do not apply to a small company.
- **Merger process** – The merger process of small companies has to be approved on a fast track basis without requiring the approval

of the Tribunal, ROC, official liquidator, members holding at least 90% of shares and majority creditors.

- **Consolidated financial statements** – As per sub-section (3) of section 129 of the Act, it appears that small companies are not required to prepare consolidated financial statements. However, the small companies which have an associate company or joint venture have to prepare the consolidated financial statements.
- **Fees under section 403 of the Act** – Fees for filings and other formalities under section 403 is also comparatively lower for the small companies.

### Conclusion

A company may classify as a small company in a particular year but may become ineligible in the next year and may become eligible again in the subsequent year. This status is determined on the basis of the Annual return which is filed after the end of every financial year. This form needs to have an attached certificate which certifies the company to be a small company. If the company is no longer a small company; along with the change in status, the benefits which are accorded to a small company are also withdrawn. The moot question which remains unanswered here is regarding the benefits which are accorded to a small company. These benefits have been given in order to ensure that the interests of such companies are protected from the consequences of regulations designed to balance the interests of the stakeholders. The Act facilitates business-friendly regulations for the small companies and is a positive step taken towards promoting investments and small companies.





## Independent Director under Companies Act, 2013

**The article intends to summarize the provisions of Companies Act, 2013 in relation to Independent Directors.**

*Ankit Mangal, Company Secretary, Outlook Publishing (India) Pvt. Ltd.*

*Email ID : ankitmangal008@gmail.com*

### Introduction

An independent director is a director (member) of a Board of directors who does not have a material or pecuniary relationship with company or related persons, except sitting fees. The Companies Act, 2013 (the 'Act'), for the first time, defines an 'Independent director' and the definition in clause (47) of section 2 is identical to the one provided in the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, which is applicable only to listed companies. Clause (47) of section 2 says that an 'independent director' means an independent director referred to in sub-section (6) of section 149.

### Applicability to Companies

(i) Every listed public company shall have at least one-third of the total number of directors as independent directors,

(ii) Following class or classes of companies shall have at least two directors as independent directors:

- Public Companies having paid up share capital of ten crore rupees or more; or
- Public Companies having turnover of one hundred crore rupees or more; or
- Public Companies which have, in aggregate, outstanding loans or borrowings or debentures and deposits, exceeding fifty crore rupees.

### Qualification to Become Independent Director

An independent director means a director other than

a managing director or a whole-time director or a nominee director who does not have any material or pecuniary relationship with the company/ directors. Sub-section (6) of section 149 of the Act prescribes the criteria for independent directors which are as follows:

- Who in the opinion of the Board, is a person of integrity and possesses relevant industrial expertise and experience.
- Such individual shall not be a promoter or related to promoter of the company or its holding, subsidiary or associate company.
- Such individuals must not have any material or pecuniary relationship during the two immediately preceding financial years or during the current financial year with the company or its promoters/directors/holding/ subsidiary/ associate company.
- The relatives of such person should not have had any pecuniary relationship with the company or its subsidiaries, amounting to 2 per cent or more of its gross turnover or total income or Rs. 50 lakh or such higher amount as may be prescribed, whichever is less, during the two immediately preceding financial years or in the current financial year.
- He, either directly or any of his relatives,-
  - (i) does not hold or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial

- years immediately preceding the financial year in which he is proposed to be appointed;
- (ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of –
    - (A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or
    - (B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent. or more of the gross turnover of such firm;
  - (iii) holds together with his relatives two per cent or more of the total voting power of the company; or
  - (iv) is a Chief Executive or director, by whatever name called, of any non-profit organisation that receives 25% or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds 2% or more of the total voting power of the company, then also he is not eligible for office of independent director; or
  - (v) possesses such other qualifications as prescribed in rule 5 as an independent director shall possess appropriate skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations or other disciplines related to the company's business.
- that he meets the criteria of independence when -
- (a) he attends the first meeting of the Board as a director;
  - (b) thereafter at the first meeting of the Board in every financial year and
  - (c) whenever there is any change in the circumstances which may affect his status as an independent director.

### Code of Conduct

Sub-section (8) of section 149 prescribes that the company and independent directors shall abide by the provisions specified in Schedule IV which specifies the Code of conduct for independent directors. The Code includes guidelines of professional conduct, role and functions, duties, manner of appointment, re-appointment, resignation or removal, separate meetings, evaluation mechanism.

### Remuneration

As per sub-section (9) of section 149 an independent director shall not be entitled to any stock option. He may receive remuneration by way of sitting fee, reimbursement of expenses incurred for participation in the Board and other committee meetings and profit related commission as may be approved by the members as provided under sub-section (5) of section 197 of the Act.

### Manner of Selection of an Independent Director

According to sub-section (1) of section 150 of the Act, an independent director may be selected from a data bank of eligible and willing persons maintained by the agency (institute or association as may be authorised by Central Government). Such agency shall put data bank of independent directors on the website of Ministry of Corporate Affairs or any other notified website. Company must exercise due diligence before selecting a person from the data bank referred to above, as an independent director. It is clarified that it is not mandatory that independent director should be appointed only from the data bank in view of the word 'may' appearing in the section.

### Declaration by an Independent Director

Sub-section (7) of section 149, prescribes that every independent director shall give a declaration

## Appointment and Tenure

Sub-section (10) of section 149 prescribes, subject to the provisions of section 152, an independent director can be appointed for a term of up to five consecutive years on the Board. However, in case of his re-appointment for further five year then special resolution passed in general meeting and disclosure of such appointment is made in the Board's report shall be required. Further, independent director can be considered for re-appointment after expiration of three years of ceasing to become an independent director but he must not be appointed/associated with the company directly or indirectly in any other capacity during the said period of three years. Any tenure of an independent director on the date of commencement of this Act is not considered for the above term. The explanatory statement relating to their appointment should contain a declaration from the Board that in their opinion, the independent directors satisfy the conditions provided in the Act for such appointment as prescribed under sub-section (5) of section 152.

Sub-section (13) of section 149 prescribes that the provisions of retirement of directors by rotation are not applicable on independent director.

## Liability

An independent director and a non-executive director, except the promoter or key managerial personnel, shall be held liable only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes and with his consent or connivance or where he had not acted diligently as prescribed under sub-section (12) of section 149.

## Meetings and Committees

The Act requires all the independent director's to meet at-least once in a year. The meeting must be convened without the presence of the non-independent directors and members of the management. An independent director would also evaluate the performance of the chairperson of the company, review the performance of the non-independent directors and the Board as a whole of the company.

## Resignation

The independent director may resign by sending a

letter of resignation in writing to the company and such letter shall be considered in the meeting of Board and when accepted the prescribed return shall be filed with the Registration of Companies ('ROC'). The director's report (immediately following the date of resignation) shall contain a reference of such resignation. It is also incumbent upon such director to send such letter of resignation, containing detailed reasons to the ROC within a period of thirty days. In the Companies Act, 1956, there was no legal obligation for an independent director to send a copy of the letter of resignation to the ROC.

## Removal

An independent director can also be removed by the company by passing an ordinary resolution in general meeting after giving him a reasonable opportunity of hearing pursuant to a special notice as permissible under section 169 of the Act. However, the Central Government vide Companies (Removal of Difficulties) Order, 2018 dated 21st February, 2018 has amended section 169 to provide that an independent director re-appointed for second term under sub-section (10) of section 149 shall be removed by the company only by passing a special resolution instead of ordinary resolution after giving him a reasonable opportunity of being heard. Appendix I to Schedule IV prescribes that vacancy so arisen shall be filled within a period of 180 days from the date of either resignation or removal.

## Conclusion

The need for the independent director was felt for providing a strong framework of corporate governance in the functioning of the company. The Act makes the role of independent director very different from that of executive directors. He helps a company to protect the interest of minority shareholders and ensure that the Board does not favour any particular set of shareholders or stakeholders. The Act empowers the independent director to have a definite 'say' in the management of a company, which would thereby immensely strengthen the corporate governance. The concept of appointment of independent directors is commendable and laudable provided the independent directors are committed and dedicated to the company with which they are associated.







## Loans to Directors and etc. : A Simplified Process under Company Act, 2013

As you are aware that section 185, which was earlier known to be a difficult one, has now been replaced with a simpler version. Therefore, this article discusses the key features of this newly refined section by Companies Act, 2013.

*Surendra U Kanstiya, Practising Company Secretary, Mumbai*  
*kanstiyask@rediffmail.com*

### Introduction

Section 185 of the Companies Act, 2013 ('the Act') has perhaps been one of the most stern sections of the Act because of its prohibitory nature. Despite the fact that few relaxations have been made available through the Rules and the exemption notification, the section continues to pose hardships to the corporate sector. Therefore a significant amendment introduced by the Companies (Amendment) Act, 2017 is the substitution of section 185 by a new section. The new section has liberalized the activities relating to making of loans, giving of guarantees and provision of securities by the companies and also ensured that the desired safety net is introduced so as to avoid the misuse of the liberty.

### Prohibited Transactions

According to sub-section (1) of section 185, a company is prohibited from advancing, directly or indirectly, advance any loan, including any loan represented by a book debt to, or giving any guarantee or providing any security in connection with any loan taken by any of the following persons :

- ◆ Any director of company
- ◆ Any director the company's holding company
- ◆ Any partner of any such director

- ◆ Any relative of any such director
- ◆ Any firm in which any such director is a partner
- ◆ Any firm in which any such director's relative is a partner

### Permitted Transactions only if Specific Conditions are Complied with

According to sub-section (2) of section 185, a company is permitted to advance any loan including any loan represented by a book debt, or give any guarantee or provide any security in connection with any loan taken by any of the following persons if the company complies with certain conditions. All these persons are termed as the 'person in whom any of the director of the company is interested :

- ◆ Any private company of which any such director is a director
- ◆ Any private company of which any such director is a member
- ◆ Any body corporate at a general meeting of which not less than 25 per cent of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together
- ◆ Any body corporate, the Board of directors, managing director or manager, whereof is

accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company

To avail this privilege, the company is required to obtain approval from the members by way of a special resolution is passed in the general meeting; and loans are utilised by the borrowing company for its principal business activities. The Explanatory Statement to be annexed to the notice convening the general meeting where the special resolution is proposed for approval should disclose the following particulars:

- ◆ Details of the loans given, or guarantee given or security provided
- ◆ Purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security
- ◆ Other relevant facts regarding the proposed transaction.

### Exempted Transactions Subject to Certain Conditions

According to sub-section (3) of section 185, the provisions relating to the restrictions or permissions as discussed above are not applicable to a transaction relating to loans etc. in the following situations.

Giving of any loan to a managing or whole-time director. This exemption would be available only if making of the loan (i) is a part of the conditions of service extended by the company to all its employees; or (ii) the scheme of loan has been approved by the members by a special resolution.

Providing loans or giving guarantees or securities for the due repayment of any loan is an activity performed by the company in the ordinary course of its business. However to avail this exemption, company has to make sure that an interest is charged at a rate not less than the rate of prevailing yield of one year, three years, five years or ten years Government security closest to the tenor of the loan.

Loan made by a holding company to its wholly

owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company. This exemption would be available only if the loans are utilised by the subsidiary company for its principal business activities.

Any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company. This exemption would also be available only if the loans are utilised by the subsidiary company for its principal business activities.

### Fine for Contravention

Sub-section (4) of section 185 provides for bigger fines in case any loan is advanced or a guarantee or security is given or provided or utilised in contravention of the provisions of section 185. The said provisions are as under:

The company shall be punishable with fine which shall not be less than Rs.5 lakhs but which may extend to Rs.25 lakh.

Every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to 6 months or with fine which shall not be less than Rs.5 lakh but which may extend to Rs.25 lakh.

The director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to 6 months or with fine which shall not be less than Rs.5 lakhs but which may extend to Rs.25 lakh, or with both.

### Conclusion

Removal of difficulties by relaxation in line with the request from the corporate sector can be termed as a major step towards ease of doing business. Whereas the safeguards introduced through the amendment would ensure proper corporate governance, the tough penal provisions would deter the directors from contravening the applicable provisions.



## Enhancing Your Inner Powers

**We all possess various inner powers, which not only help us in our adverse times, but is also a great tool to be used for our best on day to day basis. Aligning this, the article talks about unleashing the potential of inner powers.**

*Contributed by Brahma Kumaris, Om Shanti Retreat Centre, Gurugram*

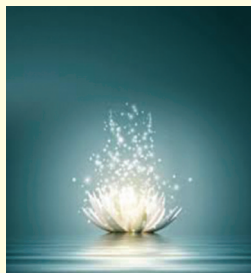
### Source of Energy Power

Long ago, humans had powers that today we consider extraordinary. Our ancestors were able to connect better with each other, deal better with relationships beyond the physical proximity, more self confident and happier. What was their secret? It is just energy! As they say, life was much simpler when 'Apples' and 'BlackBerries' were just fruits. However, the good news is – there is still that source of energy power inside you – it's just waiting to be awakened!

We all possess various inner powers, but they are often in a dormant state. In order to awaken these inner powers and start using them, the awareness that we have them and how to use them, is required. These are skills we need for living a better, happier, and more successful life. The fact is that you can achieve anything you want! However, to do the same you need to develop and maintain that mind frame.

It's human nature to start having doubts when things don't go our way. All your experiences and qualifications didn't amount to much anymore. Negativity does sets in, and you are filled with fear, self-doubt, your confidence was at its lowest but this can change!

You may be more powerful than you realize. There are certain powers within you. When these powers are understood and leveraged properly, you will actually achieve more in life; be it more



wealth, harmony in relationships, to stay healthier and to heal a strained relationship. We all have these powers but our inner potential to use them according to situations is different. However, at the outset it is necessary to know the powers before developing the capacity to use them.

### Power to Tolerate

It is the ability to respond to both external and internal events positively, yet not be affected by them. It is only possible when you are in charge of your real 'self'. What we can give to someone, is what we have inside



of us. So are our responses which is based on what we have inside. So when someone is rude or angry; s/he is acting with what they have inside and if we respond similarly, we are either affected by their emotions or even we have negative emotions within us. However, if we can augment our 'power to tolerate' we will understand the other person's vacuum and respond with what they truly need. Most often this higher energy usually negates or neutralizes the negative emotions of the other person. Just to mention, 'power to tolerate' does not make you submissive and should not be confused with not-to-speak-up when needed. It is based on situations and your abilities to decide the same.

### Power to Discern



In today's world we are more confused to take decision as we are not sure of consequences. Decision making has become a crucial part of our life both in families and organizations. With a plethora of options available to us, we remain more undecided. However, with the awareness of true self, we can develop the ability to discern the right course of action, and separate what is true from what is false. It is necessary for us to stay introvert and accumulate the power of silence to develop the clear vision inside.

### Power to Judge

It is the ability to assess the quality of choices, decisions and actions to be made by yourself and others. To be able to judge means to acquire the power to differentiate between what is 'right' and what is 'wrong', what is 'good' and what is not. It is the power to know – an aspect of being knowledgeable where you potentially know about the choices that you are making and the consequences of it. You have the ability to understand a situation beforehand and take proper decision. Decision making becomes easy once the situation properly discriminated and separated the pearls and stones.



### Power to Accommodate



We all know it is good to practice the age old saying of 'forgive and forget.' Even though we know this, most often we fail to do this. In this process we hurt ourselves the most. Keeping in mind the positives and not hold onto the pain or any one's

mistake will actually free us from the suffering. Bearing grudges affect us more than the person for whom we have the grudges. So, when you learn to accommodate you make way for positive emotions and you are the one who is happy. It is the ability to expand and accept the presence, ideas and emotions of others.

### Power to Face

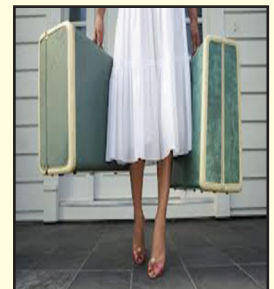


Sometimes we do not want to face certain situations in life but they are inevitable; for example death to our near and dear ones or failures or a broken relationship. We need power to accept these. We need courage to face those hard truths in our

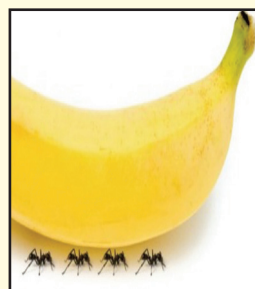
life. This power keeps us relatively stable to be able to move forward in life. It is the ability to face and resolve external and internal obstacles, tests and challenges.

### Power to Pack Up

This is very important where we learn not to ponder over something that has already happened. Putting a full stop to past happenings, as in no way can we change that? Also, discussing it with others heightens negativity. So, over-thinking in reality is draining our emotions and energies. Packing up means simply to stop thinking about it and to move on.



### Power to Cooperate



In today's world of stiff neck competition and demands we get disturbed if a person do not meet our expectations. We somewhere reject the person if we see their weakness. This power helps us to accept the other person's weakness and



support them through that. Instead of rejections, we can lend them a helping hand or a hand of kindness to support them. The more we accommodate people, the more we cooperate with them; life will give it back to us in return. It is the ability to give time, attention and share experience in the service of others and to work alongside them.

### Power to Withdraw



Just like a tortoise who withdraws its organ under the shell, we can withdraw our senses from the materialistic world and situate ourselves in soul consciousness too. This will give us power to perform more and we will be able to connect with our inner powers

and virtues. This is also known as detachment; to break away from your temporary role and connect with the real self and the Supreme energy. This actually empowers you to achieve more and take care of responsibilities better.

### Meditation

Meditation can be one of the best ways to invest which helps you to introspect, connect with your inner being and draw energy from the Supreme source. This in turn activates your dormant inner energies in the form of powers. You cannot always change situations. You can never change other people. The only thing you can change is yourself. The eight powers of Raja Yoga meditation are always available to help you in every situation that you will face in life.



The inner powers not only help you in times in adversity but can be a tool that you can use on an everyday basis. Strengthening powers through meditation can improve the power of concentration, willpower, self-confidence and motivation. Spend ten to fifteen minutes each day giving yourself positive affirmations or reminding yourself of your inner powers. This will clear the inner channels of your energy and you will

be able to better access your subconscious. Therein lies all your powers; the more you can clear your subconscious you will find yourself more stable, more powerful and more positive.

Meditation does the requisite self-work to resolve issues that may be disrupting the flow of energy in your field. Meditation expands your consciousness, journaling to get in touch with your emotions and release past emotional traumas, and heal you in order to clear your energy blockages and you reach a higher state of consciousness.

### Remain Positive

Being positive and having that positive mind frame wins half the battle. A person who thinks positive thoughts will be happier, more content, healthier, achieve more and believe they can do almost anything. Your mind is very powerful. The popular saying "if you can think it, you can achieve it" is very true. It starts in your mind and once you decide that's what you want nothing in the world can stop you but you. If you expect to get the best out of life, then you will if you do not quit. Even when you have difficult times, you will continue to be positive and see the bright side of things. You have trained your mind to be positive, and it will always feed you positive information. What you put in your mind is what you will get out. Your brain is similar to a computer. If you input positive things, you will in turn get positive information and solutions. If on the other hand if you input negative things you also get negative results.

### Positive Thinking is a Choice

You choose to be positive, or you choose to be negative. No one is naturally positive or negative. People wake up every day and decide what day they are going to have. Some will look at the day and decide that today will be the best day of their lives, and nothing can change that. It doesn't matter what the weather is like or what demands people are making. While someone else will wake up, it rains and their entire day is ruined. It is how you want it to be. You are in control of your life and no one else.

When you are positive with a positive attitude your mind is clearer, and you can think of solutions to problems and find solutions that you wouldn't have while being negative. You cannot have a negative

mindset and expect to be able to come up with positive solutions. It doesn't work that way.

Although this universal law works for all people, regardless of whether they are conscious of it, there are three important ways in which to tap into the powers and start using them to bring about positive changes to your life. Our inner sub-conscious thoughts and projections shape our outward realities. Meditation, visualization and the way in which we live are important tools in releasing the power of the Law of Attraction. Start changing your perceptions, fine-tune your vibrations and energy, and start living the fulfilling, abundant and meaningful life that you deserve.

## Conclusion

As we talked about the inner powers, the mechanisms to develop them and the potential of the subconscious, we can see that all routes converge to the theory of 'The Law of Attraction.' It simply means that you attract to you the things that you think about with the most focus and intensity. This is equally true for negative aspects as well as positive ones; like attracts like, regardless of how desirable or not these things are.

Many people are starting to use the power of the Law of Attraction to bring about positive and beneficial changes in their lives, focusing on areas ranging from relationships to careers, finances to health to academic achievement.

The Law of Attraction is not a quick-fix solution to your perceived problems, but involves a total change in the way that you think and act in order to craft a different future for yourself and this is only possible when you harness the potential of the subconscious. Changing the way that you think also involves changing who you are. How you feel about yourself governs your intentions and expectations, which in turn shape your reality and what you receive.

Living a happy, content existence, acting with goodness and kindness, and treating those around you with respect is vital for using the Law of Attraction to your advantage. If you are dissatisfied, unhappy, jealous, cruel, fearful, or have a tendency to display other negative qualities, these are the same things that you will attract back to you. If you think that your life is lacking, it will be. If you feel that your life is rich and enjoyable, so to it will be.

However, to make life happy, healthy and wealthy (as simple as it may sound here) we have to leverage our inner powers which will bring out our potentials to the best of their abilities. Our inner sub-conscious thoughts and projections shape our outward realities.

Although this universal law works for all people, regardless of whether they are conscious of it, there are important ways in which you can tap into the powers and start using them to bring about positive changes to your life.

As I talk about unleashing the potential of inner powers, let me remind myself and the readers a very favourite quote in the words of Rumi, "Do not feel lonely; the entire universe is inside you."



### STATEMENT ABOUT OWNERSHIP AND OTHER PARTICULARS ABOUT NEWSPAPER STUDENT PROFESSIONALS TODAY

[Form-IV-See rule 8]

1. Place of publication : **New Delhi**
2. Periodicity of its publication : **Monthly**
3. Printer's name : **B P Bhargava**  
Whether citizen of India ? : **Yes**  
Address : **158, Basant Enclave, Palam Road, New Delhi-110057**
4. Publisher's name : **B P Bhargava**  
Whether Citizen of India ? : **Yes**  
Address : **158, Basant Enclave, Palam Road, New Delhi-110057**
5. Editor's name : **B P Bhargava**  
Whether Citizen of India ? : **Yes**  
Address : **158, Basant Enclave, Palam Road, New Delhi-110057**
6. Name and Address of individual who owns the newspaper & partners or shareholders holding more than one per cent of the total capital : **Vidhimaan Publishers (P) Ltd.**

**158, Basant Enclave, Palam Road, New Delhi-110057**

I, B P Bhargava, hereby declare that the particulars given above are true to the best of my knowledge and belief.

Dated 1st March 2018

(Sd.) **B P Bhargava**

Publisher

# KNOWLEDGE UPDATE

## COMPANY LAW

### Designation of Special Court

The Central Government has appointed 'Additional District and Sessions court -VII, Ernakulam for State of Kerala, District and Sessions Court, Kavaratti for Union territory of Lakshadweep, District and Sessions Judge, Cuttack for State of Odisha and Additional District and Sessions Judge, No.1, Kamrup (M), Guwahati for State of Assam' as the special court for the purposes of speedy trial of offences punishable with imprisonment of two years or more vide S.O. 528 (E) dated 5th February 2018.

### Companies (Audit and Auditors) Rules, 2018

The Central Government, vide G.S.R (E) dated 16th February, 2018, has amended the Companies (Audit and Auditors) Rules, 2014 by substituting Forms ADT-1 and ADT-2 with new Forms ADT-1 and ADT-2.

### Companies (Management and Administration) Amendment Rules, 2018

The Central Government, vide G.S.R (E) dated 16th February, 2018, has amended the Companies (Management and Administration) Amendment Rules, 2014 by substituting Forms MGT-6 and Form No, MGT-15 with new MGT-6 and Form No, MGT-15.

### Companies (Authorised to Register) Amendment Rules, 2018

The Central Government, vide G.S.R (E) dated 16th February, 2018, has amended the Companies (Authorised to Register) Amendment

Rules, 2014 by substituting Form URC-1 with new Form URC-1.

### Companies (Registered Valuers and Valuation) Amendment Rules, 2018

The Central Government, vide G.S.R (E) dated 9th February, 2018 has amended rule 11 of the Companies (Registered Valuers and Valuation) Rules, 2017, by substituting for the figures, letters and word "31st March 2018" occurring at both the places with "30th September, 2018".

### Companies (Amendment) Act, 2017

The Central Government, vide S.O (E) dated 9th February, 2017, has enforced the provisions of sections 2 (except clause (i) and clause (xiii)) and section 3), 7, 9, 11, 12, 14, 17, 27 to 29 (both inclusive), 32, 34, 35, 38, 41 to 45 (both inclusive), 47, 48, 50, 51, 53, 59, 60, 63 to 65 (both inclusive), 72 to 74 (both inclusive), 77 to 79 (both inclusive), 82, 84, 85, 90 to 93 (both inclusive) of the Companies (Amendment) Act, 2017 with effect from 9th February, 2018.

### Companies (Removal of Difficulties) Order, 2018

The Central Government, vide Companies (Removal of Difficulties) Order, 2018 dated 21st February, 2018, has amended section 169 of the Companies Act, 2013, to provide that an independent director re-appointed for second term under sub-section (10) of section 149 shall be removed by the company only by passing a special resolution instead of ordinary resolution after giving him a reasonable opportunity of being heard.

## RBI REGULATIONS/NOTIFICATIONS

### Relief for MSME Borrowers Registered under Goods and Services Tax (GST)

The Reserve Bank of India, vide DBR.No.BP.BC.100/21.04.048/2017-18 dated 07th February, 2018 has decided that exposure of banks and NBFCs to a borrower classified as micro, small and medium enterprise under the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006, shall continue to be classified as a standard asset in the books of banks and NBFCs subject to the following conditions:

- The borrower is registered under the GST regime as on January 31, 2018.
- The aggregate exposure, including non-fund based facilities, of banks and NBFCs, to the borrower does not exceed ₹ 250 million as on January 31, 2018.
- The borrower's account was standard as on August 31, 2017.
- The amount from the borrower overdue as on September 1, 2017 and payments from the borrower due between September 1, 2017 and January 31, 2018 are paid not later than 180 days from their respective original due dates.
- A provision of 5% shall be made by the banks/NBFCs against the exposures not classified as NPA in terms of this circular. The provision in respect of the account may be reversed as and when no amount is overdue beyond the 90/120-day norm, as the case may be.
- The additional time is being provided for the purpose of asset classification only and not for income recognition, i.e., if the interest from the borrower is overdue for more than 90/120 days, the same shall not be recognised on accrual basis.

## INSOLVENCY LAW

### Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2018

The Insolvency and Bankruptcy Board of India (IBBI) has amended the Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017. Key amendments are as follows:

**Term “evaluation matrix” has been defined** – “Evaluation matrix” means such parameters to be applied and the manner of applying such parameters, as approved by the committee, for consideration of resolution plans for its approval.

**Term “fair value” has been defined** - “fair value” means the estimated realizable value of the assets of the corporate debtor, if they were to be exchanged on the insolvency commencement date between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and where the parties had acted knowledgeably, prudently and without compulsion.

**Definition of term “liquidation value” has been amended** – “Liquidation value” means the estimated realizable value of the assets of the corporate debtor, if the corporate debtor were to be liquidated on the insolvency commencement date.

**Registered valuers** – The resolution professional shall appoint registered valuers to determine the fair value and the liquidation value of the corporate debtor. After the receipt of resolution plans, the resolution professional shall provide the fair value and the liquidation value to each member of the committee of creditors in electronic form, on receiving a confidentiality undertaking. The resolution professional and registered valuers shall maintain confidentiality of the fair value and the liquidation value.

**Information memorandum** – The resolution professional shall submit the information memorandum in electronic form to each member of the committee of creditors within two weeks of his appointment as resolution professional and to each prospective resolution applicant latest by the date of invitation of resolution plan, on receiving confidentiality undertaking.

**Invitation to resolution applicant** – The resolution professional shall issue an invitation, including the evaluation matrix, to the prospective resolution



applicants. He may modify the invitation as well as the evaluation matrix. However, the prospective resolution applicant shall get at least 15 days from the issue of invitation or modification thereof, whichever is later, to submit resolution plans. Similarly, he will get at least 8 days from the issue of evaluation matrix or modification thereof, whichever is later, to submit resolution plans. An abridged invitation shall be available on the web site, if any, of the corporate debtor, and on the web site, if any, designated by the IBBI for the purpose.

**Liquidation value** – While the resolution applicant shall continue to specify the sources of funds that will be used to pay insolvency resolution process costs, liquidation value due to operational creditors and liquidation value due to dissenting financial creditors, the committee of creditors shall specify the amounts payable from resources under the resolution plan for these purposes.

**Resolution plan** – A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximization of value of its assets. These may include reduction in the amount payable to the creditors, extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor, change in portfolio of goods or services produced or rendered by the corporate debtor, and change in technology used by the corporate debtor.

**Resolution Professional** – The resolution professional shall submit the resolution plan approved by the committee of creditors to the Adjudicating Authority, at least 15 days before the expiry of the maximum period permitted for the completion of the fast track corporate insolvency resolution process.

### **Insolvency Professional to use Registration Number and Registered Address in all his Communication**

Insolvency and Bankruptcy Board of India, vide Circular No. IP/001/2018 dated 3rd January, 2018 has directed that the Insolvency Professionals, in all his communications whether by way of public announcement or otherwise to a stakeholder or authority, shall prominently state the following:

- His name, address and email as registered with IBBI
- His registration Number as an insolvency professional granted by the IBBI
- Capacity in which he is communicating

### **Relaxation in the Provisions Relating to Levy of Minimum Alternate Tax (MAT) in the case of Companies against which Application for Corporate Insolvency Resolution Professional has been Admitted under the Insolvency and Bankruptcy Code, 2016**

With a view to minimise the genuine hardship in relation to restriction in allowance of brought forward loss for computation of book profit under section 115JB, faced by companies against whom an application for corporate insolvency resolution process has been admitted by the Adjudicating Authority under section 7 or section 9 or section 10 of the Code the Ministry of Finance, has decided that with effect from assessment year 2018-19 (i.e. financial year 2017-18) the amount of total loss brought forward (including unabsorbed depreciation) shall be allowed to be reduced from the book profit for the purposes of levy of MAT under section 115JB of the Act.

### **Disclosures by Insolvency Professionals and Other Professionals Appointed by Insolvency Professionals Conducting Resolution Processes**

Insolvency and Bankruptcy Board of India, vide Circular No. IP/005/2018 dated 16th January, 2018, in order to provide transparency has mandated the Insolvency Professional for following disclosures:

- Relationship with corporate debtor, other professional engaged by him, financial creditor (s), interim finance provider (s) and prospective resolution applicant (s) to the insolvency professional agency of which he is a member, within the time specified.
- Relationship, if any, of other professional engaged by him with himself, the corporate debtor financial creditor, interim finance provider, and prospective resolution

applicant (s) to the insolvency professional agency of which he is a member, within the time specified. The nature of relationship has been provided in the circular.

### **Fees Payable to an Insolvency Professional and to Other Professionals Appointed by an Insolvency Professional**

Insolvency and Bankruptcy Board of India, vide Circular No. IP/004/2018 dated 16th January, 2018, has clarified that an insolvency professional shall render services for a fee which is a reasonable reflection of his work, raise bills / invoices in his name towards such fees, and such fees shall be paid to his bank account. Any payment of fees for the services of an insolvency professional to any person other than the insolvency professional shall not form part of the insolvency resolution process cost.

## **SEBI LAW**

### **Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2018**

SEBI, vide No. SEBI/LAD-NRO/GN/2018/01 dated 12th February, 2017 has amended the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 by omitting clause (c) in regulation 82.

### **Electronic Book Mechanism for Issuance of Securities on Private Placement Basis**

Securities and Exchange Board of India, vide Notification No. SEBI/HO/DDHS/CIR/P/2018/05 dated 5th January, 2018, has further streamlined the process of private placement of debt securities, allowed private placement of other classes of securities which are in the nature of debt securities and enhanced transparency in the issuance so that there is better discovery of price. The revised guidelines can be referred to in Schedule-A to the circular.

### **Online filing System for Offer Documents, Schemes of Arrangement, Takeovers and Buy Backs**

Securities and Exchange Board of India, vide circular number SEBI/HO/CFD/DIL1/CIR/P/2018/011 dated 19th January, 2018, in order to ease the operations under SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and SEBI (Buy Back of Securities) Regulations, 1998 and various circulars issued thereunder, has introduced an online system for filings related to public issues, rights issues, institutional placement programme, schemes of arrangement, takeovers and buy backs. SEBI Intermediary portal is available at <https://siportal.sebi.gov.in>. The link for SEBI intermediary portal is also available on SEBI website – [www.sebi.gov.in](http://www.sebi.gov.in). It shall be used by the merchant bankers and recognized stock exchanges for filing purposes.

## **CASE LAW**

### **Rectification of Name of Company**

**A registered proprietor of a trade mark could make an application within a period of five years of becoming aware of registration of a company with a similar name.**

It is implicit in the proviso to sub-section (1) of section 22 that a registered proprietor of a trade mark could make an application within a period of five years of becoming aware of registration of a company with a similar name. The Regional Director could thus act on a representation even after twelve months had elapsed from the registration of the company with the undesirable name – *Mondelez Foods (P.) Ltd. v. Regional Director (North), Ministry of Corporate Affairs, [WP(C) No.5289/2014 and CM No. 10518/2014, dated 7th July 2017 (Del.)]*

### **Oppression**

**Where petitioners, having knowledge of the extraordinary general meeting being held,**

**choose not to attend the meeting, there is no act of oppression of the petitioner.**

Where the Tribunal, taking into consideration the evidence on record, rightly held that notice of the extraordinary general meeting in question was served on the petitioner, and they did not choose to participate in the said meeting, it could not be said that there was oppression of petitioners on the part of the respondents – *Den Nasik City Cable Network (P.) Ltd. v. Milind Dayaram Kapse* [CA (AT) No. 58 of 2017/CA (AT) No. 130 of 2017 dated 23rd August, 2017 (NCLAT)]

### Number of Members of Private Company

**In computing number of members of private limited company, joint shareholding of members, and shareholding of employees or transfer of shares by employees in favour of their family members or otherwise will have to be excluded.**

Where for purposes of definition of 'private limited company' number of members of the company is required to be computed, while doing so joint shareholding of members, and shareholding of employees or transfer of shares by those employees in favour of their family members or otherwise will have to be excluded under sub-clause (b) of clause (iii) of sub-section (1) of section 3 read with proviso - *Darius Rutton Kavasmaneck v. Gharda Chemicals Ltd.* [CA No. 24 of 2010 & CP Nos. 132/397-398/CLB/MB/2009 dated 4th August 2017 (Bom.)]

### Compromise or Arrangement

**Compromise or arrangement does not fall within article 20(d) of Schedule IA of the Stamp Act attracting stamp duty.**

In view of clear language employed in article 20(d) of Schedule of the Stamp Act and sub-section (1) of section 394, unlike amalgamation and merger, compromise or arrangement does not fall within that article attracting stamp duty. Therefore, order of the Registrar of Assurance directing petition company to pay requisite stamp duty is liable to be set aside being beyond his power – *GVK*

*Power & Infrastructure Ltd. v. District Registrar of Assurances, Red Hills* [WP No. 5399 of 2008 dated 6th July 2017 (T&AP)]

### Triggering Insolvency Code

**The mandatory condition for triggering the Insolvency Code is clear from a conjoint reading of sections 8 and 9. The application must have a copy of the invoice/demand notice attached to it.**

Sub-section (1) of section 9 contains the conditions precedent for triggering the Code insofar as an operational creditor is concerned. The requisite elements necessary to trigger the Code are (i) occurrence of a default; (ii) delivery of demand notice of an unpaid operational debt or invoice demanding payment of the amount involved ; and (iii) the fact that operational creditor has not received payment from the corporate debtor within a period of 10 days of receipt of the demand notice or copy of invoice demanding payment, or received a reply from the corporate debtor which does not indicate the existence of a pre-existing dispute or repayment of the unpaid operational debt. – *Macquarie Bank Ltd. v. Shilpi Cable Technologies Ltd.* [CA Nos. 15135, 15481 & 15447 of 2017 dated 15th December 2017 (SC)]

### Applicability of Securitisation Act

**Securitisation Act shall apply to all existing agreements even though lender was not a notified 'financial institution' on date of execution of borrowing agreement and was notified subsequently.**

Securitisation proceedings and arbitration proceedings can go hand in hand. Where lender is not a 'financial institution' within the meaning sub-clause (iv) of clause (m) of sub-section (1) of section 2, it could invoke the provision of the Act till it was notified, as the right to proceed under the Act would accrue once the notification was issued. The date on which a debt is declared as non-performing asset would have no impact in the matter - *M D Frozen Foods Exports (P.) Ltd. v. Hero Fincorp Ltd.* [CA No. 15147 of 2017 dated 21st September 2017 (SC)].



## KNOWLEDGE UPDATE

### SEBI LAW

#### Margin provisions for Intra-day crystallised losses

Securities and Exchange Board of India, vide Circular No. CIR/MRD/DRMN/P/008/2018 dated 8th January, 2018, in order to mitigate the risk arising out of accumulation of crystallised obligations incurred on account of intra-day squaring off of positions, has decided as follows:

- The Intra-day crystallised losses shall be monitored and blocked by clearing corporations from the free collateral on a real-time basis only for those transactions which are subject to upfront margining.
- If the crystallised losses exceed the free collateral available with the clearing corporation, the entity shall be put to risk reduction mode as specified in para 7 of SEBI Circular No. CIR/MRD/DP/34/2012 dated 13th December, 2012.
- Crystallized losses shall be calculated based on weighted average prices of trades executed.
- Adjustment of intra-day crystallized losses shall not be done from exposure free liquid network of the clearing member.

Also, the recognised clearing corporations have been advised to—

- implement the directions of the circular latest within three months from the date of issue of the circular,
- bring the provisions of this circular to the notice of its clearing members and also to disseminate the same through their website,
- communicate the status to SEBI in the Monthly Development Reports to SEBI.

### ATTENTION STUDENTS (PROFESSIONAL STREAM)

ICSI is providing an e-library (CLAonline) to students in professional stream. The e-library consists of Case Laws (with head notes), Wealth of intellectual knowledge in the shape of Articles by experts, Procedures under Company Law, Resolutions, Queries and their Replies by experts, Notifications and Circulars of various Ministries / Departments, Updated legislations, etc., with search facilities. The details of the e-library has been sent to you via email. In case you have not received it, you can obtain it as follows:

- Visit [www.CLAonline.in](http://www.CLAonline.in)
- Click Forgot password
- Put your email id (as registered with ICSI) and click Proceed

You will receive an email and an SMS (as registered with ICSI) containing your user id and password

If undelivered, please return to:

**Krishna Law House,**  
128, Municipal Market, Super Bazar Compound,  
Connaught Place, New Delhi-110001.