

September, 2021  
209<sup>th</sup> Edition



Mysuru Chapter  
**e-Magazine**



**Vision**

"To be a global leader in promoting good corporate governance"

**Motto**

सत्यं वद। धर्मं चर। इच्छते ते त्पुत्रे। वसिष्ठे ते पुत्रे त्पुत्रे।

**Mission**

"To develop high calibre professionals facilitating good corporate governance"

Connect with ICSI



<https://www.facebook.com/ICSI>



[https://twitter.com/ICSI\\_CS](https://twitter.com/ICSI_CS)



<https://www.linkedin.com/in/the-institute-of-company-secretaries-of-india-icsi-a5899a102/>

# Inside this Issue

## I Articles

The Law relating to Remuneration of Directors under the Companies Act 2013 as amended up to 18 March Part V	17
Key Takeaway LLP (Amendment) Act 2021	23
Annual Compliance under IBC 2016 and Labour Laws	28
Startups Eyeing the Capital Market	34
Work from Home A New Normal Post Covid - HR Perspective	36
GST Update	40

---

## II Columns

From Chairman's Desk	03
Chapter Activities	05
Over a Cup of Coffee with....	07
Food for Thought	43
Regulatory Updates	44
Delhi Diaries	45
Tech Corner	48

***Knowledge Series by CS Dr CHANDRATRE on the topic of  
"Managerial Remuneration" Part V.  
Topics Covered in this edition: Remuneration to  
Professional Services and Related Judgements continued***

## From the Desk of Chairman



**CS Vijaya Rao**  
Chairperson  
Mysuru Chapter

### Dear Professional colleagues,

It is always a great feeling to meet all of you through this eMagazine editorial.

Month of August students were busy with writing the exams. Hope everyone did well. Now you can continue to read and participate in different activities which chapter organizes to gain more knowledge and skill.

First week of Sept was teacher's week. Teachers are the one who creates next generation and who created the past generation to form a responsible citizen and in turn responsible society. Without teachers no other profession exists. As Helen Caldicott, Physician and Author said, "Teachers, I believe, are the most responsible and important members of society because their professional efforts affect the fate of the Earth." – And in our Indian culture, Veda, Upanishads, epics everywhere we can see the importance of the teacher. Like our beloved Abdul Kalam said, "Teachers are the backbone of any country, the pillar upon which all aspirations are converted into realities".

To express our gratitude towards teachers who shape our lives, our Institute celebrated the whole week as teacher's week by organizing many webinars for teachers. Chapter joined hands with the institute, also celebrated teacher's day with college and PUC teachers by organizing webinars specifically for teachers. And on the 8th of sept on the occasion of International literacy day full day program was organized for college students around Mysuru.

Now we can focus on our students and members program in the coming days. As and when it is announced please attend and together we can learn and gain knowledge.

Again, make use of the opportunities to improve your communication, public speaking and writing skill by joining the chapter's Toastmasters club and writing articles to this eMagazine. Chapter is proud to announce that it is the second chapter in the country to have Toastmasters club started specifically for CS members and students. On the 6<sup>th</sup> of Spet. it had its first installation ceremony of the office bearers.

Stay safe

Thanking you,



**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)

## Editorial Team

### -: Editorial Team :-

CS Vijaya Rao  
CS Phani Datta D N  
CS Parvati K.R  
CS Ajay Madhaiah  
CS Madhur N Agrawal

### -: Support Team:

Mr. Komal Kumar M  
Ms. Keerthana Gopal  
Ms. Matruka B.M.

Join **5900+** members' strong

**"CSMysore" eParivaar**

<http://www.groups.google.com/group/csmysore>

Now it's easy to receive the e-Magazine  
directly into your personal mail id.

Click <http://goo.gl/PV9Olr> and fill-in simple info.

You may send this link to your friends too!

Please write your comments and feedback to us:

[newsletter.icsimysore@gmail.com](mailto:newsletter.icsimysore@gmail.com)

## Disclaimer

Views and other contents expressed or provided  
by the contributors are their own and the Chapter  
does not accept any responsibility. The Chapter  
is not in any way responsible for the result of  
any action taken on the basis of the contents  
published in this newsletter. All rights are  
reserved



# Chapter Activities

## 1. Joint Webinar with TiE Mysuru

Chapter in association with The Indus Entrepreneurs, (TiE) Mysuru Chapter organized a webinar on the topic “Importance of Compliance Culture & Corporate Governance in Startups” on 27th August 2021, 6.00 pm to 7.30 pm. Mr. Ajith Pai, President-TiE Mysuru welcomed the participants & introduced the TiE Mysuru Chapter. CS N Balasubramanian, Chairman-SIRC delivered the opening remarks. Mr. Shankar Prasad, TiE Associate Member introduced the speaker. The speaker of the webinar CS Sudhakar Saraswatula, Vice President, Corporate & Secretarial at Reliance Industries Ltd., explained the importance of compliance and corporate governance from the inception of the company. He explained it from the ancient India and with Chanakya neeti. CS Vijaya Rao, Chairperson ICSI Mysuru Chapter proposed the vote of thanks. Mr. Pramodh B N., TiE Charter Member moderated the session.

## 2. Career Awareness program

Mysuru Chapter organized two career awareness programs during the month. The details are as follows.

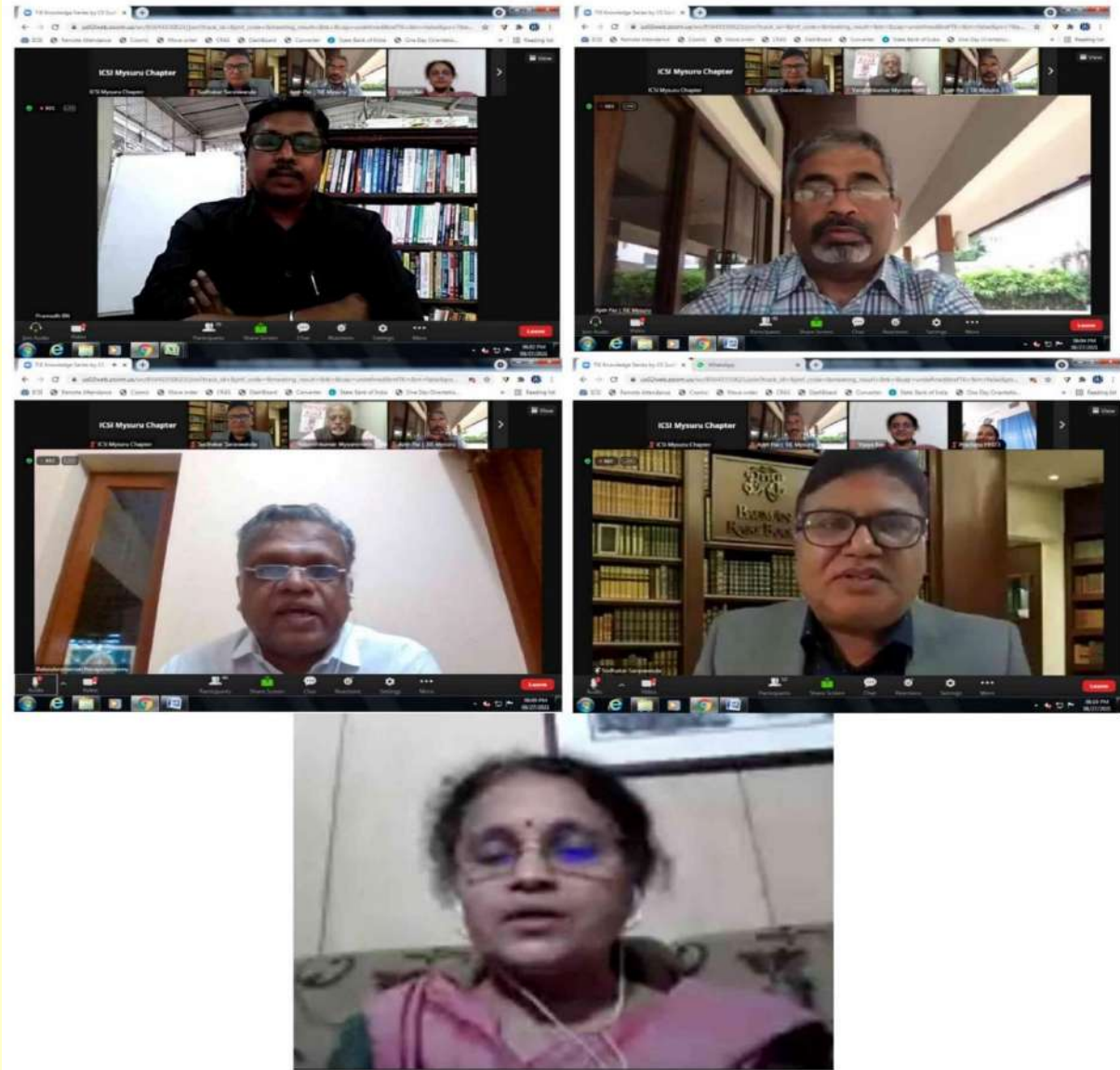
S. No	Date	College Name	Resource Person	No of Students
1	02.08.2021	MIT First Grade College (Physical)	CS Vijaya Rao, Chairperson N. Dhanabal	100
2	07.08.2021	Teresian College - Online	CS Debadas Panda CS Phani Datta D N	85



# GLIMPSES OF WEBINAR ON IMPORTANCE OF COMPLIANCE CULTURE & CORPORATE GOVERNANCE IN STARTUPS

Date – 27.08.2021

Organized by  
ICSI Mysuru Chapter & TIE Mysuru Chapter



## THE GLIMPSE OF THE TOASTMASTERS MEETING





# Over a Cup of Coffee With...

Abridged and Edited



**CS Karthick Varadarajan**  
Practising Company Secretary



**Concept & Compilation:**  
**CS Pracheta M**  
Practising Company Secretary



**CS Dr Shobha Sridhar**  
Practising Company Secretary

**CS Pracheta-** *Once again, welcome to all of you for another interview session with one of the eminent company secretaries. Today we have with us CS Karthick Varadarajan. He is a practicing company secretary from Bengaluru. Sir, it's an honour to have you for this month's interview for ICSI Mysuru Chapter e-magazine. We welcome you Sir.*

**CS Karthick Varadarajan** - Thank you so much.

**CS Pracheta-** *I also welcome my co-host CS Shobha to this interview session. The first question which we would like to ask our guest whom we call as our celebrities, what made you to be a CS and what made you to join the practice?*

**CS Karthick Varadarajan** - First of all I formally thank both of you and the Mysore chapter for inviting me, I want to acknowledge the contribution of both of you. You come month after month and conduct these interviews I would like to place on record the great service that you are doing to bring up this profession in whatever best way you can.

I would like to start answering your first question as to what brought me into the field of company secretaries, a very usual question which everybody is asking today: why I should be a company secretary?, what it takes to becoming a company secretary and why only company secretary, why not something else?

To understand this from my perspective we will have to go back in time, about 40 years back. During my school days I never knew that there is a course called Company Secretaryship. At the most I had heard only chartered accountancy and cost accountancy. I never heard about this one even till I was doing my commerce graduation. I would like to state that although I was a very studious person & I would work hard as a student, somehow I was not in ranks or high scoring marks. So, I had to switch on to employment immediately after graduation, without venturing into higher studies. So, straight away I went to some chartered accountant to learn what is accounts and how do you maintain the books of accounts and what are the double entry systems. Till then I had only academical part; no practical exposure. Immediately he put me on to a bank audit!

I have learned very early in life that we have to start working, we have to take new assignments. Sometime for the first time you have to take it up. We cannot say that I am not experienced, I can't do it, I have not done it before. So, from such a very humble background I went and joined the accounts department of a factory; There I learnt how to work systematically because we did not have a great manpower. For the students, I want to give a subtle message here.

Wherever you are in profession, after twenty years or thirty years, remember the lessons you learn early in your life; that is what is going to help you much.

Later, I shifted employment and joined a company for a Project and its accounting. The turning point was there. I was reporting to the Company Secretary there. The Company Secretary was in charge of the new project and I started reporting to him. The project was under the funding stage, unfortunately the funding did not happen and the project was dropped. The CS, hence invited me to join the company secretarial department. And also parallelly at the same time my sister was getting married and the would-be in-laws in that family were all highly educated. So, I registered myself as a student of company secretary at ICSI, just to say that I'm doing CS; just to have this false sense of pride. Little did I know then what CS means! Honest to goodness I never opened the book for the next maybe three years.

Then something happened in my career that forced me to relook. What exactly happened was I hit a point of growth. I grew very fast. Let me tell without any sense of pride that if you are a good student of this profession, jobs will chase you. After two years of working with this company in Delhi, there were people who were chasing me to get me the employment mainly because there were hardly any support staff available. There were no officers available. There were no executive available so here I am again. I would have written not less than 5001000 pages of minute sheet. I want to reiterate that, today everybody wants to think of copy paste Resolutions, notices and board of directors report, all are copy pasted. My dear friends, I have written all those things by hand again and again, and you are not expected to do any mistakes also. You have to write it very carefully. You should avoid putting whitener over it, you avoid putting any eraser over it; you have to be very careful.

After 2 years of working in the secretarial department, two or three jobs were looking at me at the same time. I just joined one of them and within a year once again I hit a bottleneck. I stagnated and then my boss who is also a good friend today, said that, if I want frequent jumps in the profession and if I wanted to grow in the profession, I would have to qualify for this exam early. I would say that I had one more friend, he's the one who brought me into this profession. He was himself not qualified CS but he had a vision that I could do that. Late Mr Brijesh Ghildyal was an advocate and he wanted me to become Company Secretary. In a sense I could say that he was my guru in the profession in a very true sense. He was happy for me to pass the exam. He used to encourage me if I failed also in the exam - "you can do it, what is the big deal in this". So, I am so much indebted to that family. He was the one who had lot of faith in me, and he encouraged me and got me into this profession. That is how I came into the profession and when I stagnated at a point I had no choice. After working about maybe 5 and half, six years I realized that unless & until I clear the exams, it's not going to happen. So that is the point why I decided to be a Company Secretary.

*CS Pracheta - Yes Sir. It was a wonderful journey to listen to. One important thing which I think is a takeaway, is that generally when we say professional courses, they say it is tough whether it is CS or CA, it is very tough and is only for those people who are rank holders, but you actually mentioned that you were not one of those who was always a rank holder but still you are now one of the top most company secretaries in India. So, this is a message which everybody should know.*

*CS Shobha- Absolutely, I agree with that.*



**CS Karthick Varadarajan** - Just one point I will add here. From my life, probably students can take a lot. I don't know how much the other elders can take. I want to share here one point that, as soon as I decided to start studying, I took a short sabbatical from my employment. I resigned and I came back home and started looking and opened the study material. My guruji said you have to get new material, don't work on the old set of books because you never know... certain portion of law would have changed. So one point here is when studying, always use the latest book; never use the old book that might mislead you, that might give you the old position and that's not the right thing to do in our kind of profession.

Whenever I was tired, I remembered the Sanskrit shlokas which were taught to us in the school. I would like to say one such shloka which has been a guiding factor for me. I have read that - *udhayamenava hi sidhyanti karyaNi na manorathai: nahi suptasya singhasya pravishyanti mukhe mriga:* What it means is merely by daydreaming and by just keeping the book, you are not going to clear the exams. You have to work hard for it. A deer or an animal does not automatically enter a sleeping lion's mouth! That is something I try to follow even today. I try to remind myself today also that if I have to go to the next level of orbit or if I have to go to the next level of practice, I have to do something different about it so there will be a defining Practice.

*CS Shobha - That actually brings me to the next question. It is said that challenges are what make life interesting and overcoming them is what makes life meaningful. you have already shared the challenges faced while entering the profession. Now any challenging situation that you faced in the profession and how were you able to overcome it. Can you share your views?*

**CS Karthick Varadarajan**- What I say is that preparedness is one thing that is very important. Whenever any challenge faces me what I do is, I look at where I stand in that work item, what is it that I need to achieve and how do I bridge the gap? All it needs is taking responsibility for the situation, putting the right resource on the work, assess if I'm lacking on some knowledge or some technology or whatever it is, I need to bridge the gap. Even after the qualification, I was looking for some new skills, how better I can communicate, write and speak... One of the things what I learned was to take responsibility for the situation whenever any challenge comes. Today also, I own up the failure or own up the situation and from there I look at how I can take it forward. I hope Shobha that answers your question.

*CS Shobha- So take responsibility for the situation and from there move on forward.*

**CS Karthick Varadarajan**- That may require some analysis, some kind of SWOT analysis - how, what, the worst situation, how bad it can go or how can I start improving upon it.

*CS Shobha- So basically if you are persistent, you will get it and if you're consistent, you will keep it. That I think is the message.*

**CS Karthick Varadarajan** - If time permits, shall I narrate one situation? It might help lot of people. Between 1993 and 98 or 2000, I have handled, say not fully, but I coordinated some of the IPOs, and in one such IPO, what happened was - those were the days for listing, we need to take all the allotment details to the Stock Exchange. We had to show the basis of allotment, how it is done so on and so forth. There was a mechanism by which they used to select the applications for allotment. When the issue is oversubscribed, they would ask us to put the applications in a particular serial order and then some specific numbers would get the allotment. Now to prevent any kind of prioritization or anything, there

was one more concept which was called 'reverse number' mechanism. I can't go a much into detail with the given shortage of time, but after having gotten everything, listing, permission etc was done, As I was very inquisitive about learning things. I put a question to the listing manager as to the reverse number mechanism. If you put a number in the excel sheet as 1, 10, 100, 1000 etc, can you reverse it in excel itself? It will come as Sl. No. 1 only. How are you going to find out the ascending order? See the question was very intelligent mathematical question but I got trapped into that!! I had to get the listing letter from her. She is not releasing that letter because she felt there was some issue in that basis of allotment due to my questioning. We were there almost on the last day, we're fighting for that letter and out of my own curiosity, I spoiled the case.

That Madam simply closed all the records. She said that your basis of allotment is wrong. Go get your RTA. I was in Kanpur, my RTA was in Delhi! That day I had to get the letter. This was the tight situation or a challenging moment for me. Also, it was one of the worst moments I ever faced- 'arey, why did I open my mouth, yaar?' She was happily giving the letter, I should have carried it and gone back to Delhi. I took all the records back to my hotel room and I started working on the mathematical combinations and thankfully in that situation my issue was not highly oversubscribed. It was just partially oversubscribed, with some categories having little more than the other. So by a mathematical model, I proved to that lady officer that whether we have done it rightly or wrongly, everybody who should have gotten the allotment has indeed gotten the allotment. So it took lot of time and efforts just to think as to how to arrange the data, how to arrive at a solution. As I said these are the moments when you learn things what a joy it was. And when next day morning when I took that calculations, I proved that no injustice was done to anybody. She did the calculation in her own way, and she said that I was right and then she acknowledged that I'm a good student of math's. So it happens. There have been more situations but this is what I say that any challenging situation, you have to evaluate the situation, where we stand and how to bridge the gap. Merely blaming anybody else, merely feeling guilty, angry or any other justifying the position, nothing is going to happen. You got to make the move, you got to own it up as if I'm the one who is responsible for this. I could not have escalated this matter to my seniors at all. I had created the problem, I had to solve it and thankfully I did. God was smiling at me and I proved that we are good.

*CS Pracheta- Great, Sir. It's great to know this and also how you overcame it is really interesting. You are an inspiration. I know that Shobha Madam will also agree that for most of us who are part of the study group and even outside, you are an inspiration to many of the youngsters. What are the qualities which you think are essential for younger professionals to grow in the profession?*

**CS Karthick Varadarajan** - See, first of all, truthfulness is very important. If I am not truthful to myself then I can't face anybody. To both of you and all the audience, I want to say one thing, if ever I expected anything from anybody, first I would do that myself. Even with my children/ family, anybody for that matter. I don't believe in expecting something great from my team members, I never pushed any work to them which I'm not able to do. I'll sit with them, I'll try to understand what it is, what it takes to do that work and then I will ask them to do it. if necessary, I'll handhold them. I handhold my trainees to a large extent and ensure that they don't fail. If not once, then twice, then thrice. That level of truthfulness is very important. When I say something, I keep up the word. You have to have the integrity.

**CS Shobha** - *Amazing, really overwhelmed. That comes to my next question. You are also active in lot of activities of the students & Institute, and you are a speaker at various programmes, CCGRT, expert committees etc. how are you able to devote time for all these activities?*

**CS Karthick Varadarajan** - Shobha, I am not a super achiever, whatever activity I have done for the institute, whatever little actually, I have tried to carry my family along with me. I inform them, I take their permission in one or the other way and because I know that they miss me, I know that I miss them. I am not running away from them to CCGRT or anywhere else. So I get a pillar of strength from my family. They let me go, they let me do. I would say their sacrifice is higher than mine and I can't take it lightly.

I would like to share here one more failure. My life is all about moving from failure to failure only and in that process I found my success also! Immediately after the qualification, I was already married by that time and I ventured out to write a book on 'Company Accounts' and the requirements of company law. So, when I started writing, I was hardly not even thirty years of age! Who did the bigger sacrifice, you tell me? My wife did!. Actually, I took away the time that belonged to her. I said it was a failure because the book never saw the light of the day but what it gave me was immense knowledge about company accounts. I did not look at the failure as a failure. I got knowledge now. We did lot of research work at that age giving all my Sundays and Saturdays and any holiday for that matter because I was working as an employee, as a company secretary in an organization. I had to do full justice to the office also so whatever little time was available I would give to the work. That the book did not happen is another thing. So it's not new and yet the sacrifice what the family did was higher, what I did was less actually. At least I could go out, I could stand out, I could speak, I could be acknowledged by everyone. They never got their dues but someday they will.

**CS Pracheta** - *This is a surprise coming that you were venturing into writing a book. I think you should now try to do it. I had actually planned a question on work-life balance also which I think you already answered. I have noticed that people who are quite successful in their lives, in their careers basically, have a very successful career but many times they don't balance their personal lives. So, you think that it is possible to manage both? Or do you have any regrets about not spending time with family?*

**CS Karthick Varadarajan** - Absolutely possible, Pracheta. You only need to carry them along with you. You make them part of your dream and whatever little time is available, we use it more productively. It is an oft-repeated word 'quality time'. What is it? It is that when I am speaking to my children, I am not doing anything else. I was just sharing same thing just today with my family. When I go out on vacation or wherever, I don't open my books. So if I'm watching a movie, I'm fully into that; if I'm eating, I'll not bring any official communication there. It may be part of a conversation, that's a different thing, but you will not see me discussing about any company law or anything there. I am fully available for them. I am not a good singer but if I'm sitting with my daughter or any other family members try to do something I will be there only. But that is the joy I would say. Then when we get on to work we get on to work. I don't mix.

**CS Pracheta** - *It's very beautifully put out that it is possible to balance both, totally possible.*

**CS Karthick Varadarajan** - I agree. Continuing on giving full attention to the activity on hand, I would like to give a message to all the students that people like Dr. Shobha, she can continue in her practice, she can make lot more money.

I would, with all humility at my disposal, request students to make best use of her time, not to waste her time. Be prepared for the classes.

I would also like to share one thing here. As a student, I went to the oral coaching classes and I treated each and every lecture, mark my words, as if my life depended upon the lecture. I think that was the point of transformation for me. So if students are reading this, please don't take your oral teaching faculty members for granted. They can earn a lot. They are not here for money. They are here, as Dr. Shobha said, she's teaching only for passion & nothing else.

So I never missed even one class, I would be seated in 5 minutes before the teacher comes. What I wanted to say was all the oral coaching faculty members teachers, they deserve lot more respect from the students and that will define your profession. That will take you to a greater heights. The contribution what my teachers had on me, I had no clue about. How to do company accounts, consolidation or amalgamation or insurance companies? I had no clue at all. It was my Accounts lecturer Dr. R P Rastogi who made it simple for me. So I want to once again thank Shobha for all your efforts that you are doing.

**CS Shobha** - *Thank you Sir. Now we are coming to the fact about Dharma and you have written articles linking scriptures & management of the profession with us scriptures like Ramayana and Mahabharata. In your opinion, whether such connections to scriptures help us into or grow professionally? We are keen to know more on this line of thought.*

**CS Karthick Varadarajan**- See, governance has its roots in the scriptures. My worry is, it has been tarnished, it is being quoted out of context today by many institutions. If you look at the governance principles given in our ancient scriptures, again, it should be authentic version, not an imaginary version. Imaginary version is you can write novels, write imaginary stories. They should not then use names such as Krishna, Karna, Arjuna and all that. They should say any other name, Tom Dick Harry, you can say he went to the forest or whatever. Let us see how many people read that. Today lot of people are tarnishing but if you go to the real, authentic source of these materials, I have no doubt at all you will find gems. You will find a lot of lessons to get from there. But the trouble is you will also get some poison from there. It will challenge us - what have you been doing till now? I will not go deep into the subject now because it has already become quite controversial.

Let me give an example. People try to link CSR with 'charity' given as a concept in the Dharma. There cannot be more disservice to the scriptures by doing this. CSR is not charity, CSR is an obligation. We should have the faith, the strength and the courage to say that. If I want to do something, I should do it. If I want to do some CSR or charity or whatever, I can't ask you to do it. If I ask you to do it, it is not charity at all. I can only request, I can't even make it a law. Chanakya clearly distinguishes 'Dana' (charity) from 'dakshina' (fees or an obligation). We don't have the courage to follow that today, that's unfortunate scenario. We wish to encash upon these things, just superficially follow some portion of the scriptures and we say that it is said in the Mahabharata or Gita somewhere and everybody accepts it because their level of knowledge is also not much. So I would encourage lot more students to dwell upon this, to ponder upon this, to dive deep into this, to get the truth out of it. I was very fortunate I would say that when I was in school, probably 6-7 standard onwards, my father and my Grandfather started teaching some of these scriptures in to me, to memorize and to understand. Of course, understanding came much later but he wanted to inculcate the study of Vedas, upanishads, Mahabharata etc. During my childhood days, I want to share with both of you & the audience, I have not watched any movie in the theatre. So the only source of entertainment was to read Mahabharata or Ramayana again & again. In

summer vacations, you just take some Upanishads and start studying it. If you are a young parent or if you are a student, I would like to tell you that all that you do in the younger age leaves a lasting impression. I'm sure Pracheta you can relate to this. You are also bringing up your child in a good way. You are giving him the culture. There may be resistance at some point, Then you have to tell him or for that matter any other person you will have to tell your children, that, "this is the age even if you don't want, you will get this easily... Much ahead in life, when your hair goes grey, even if you want it you will not get it".

**CS Pracheta** - *Absolutely agree with this.*

**CS Karthick Varadarajan** - This point has to be brought out to them. I can tell you that there are lot of principles and discipline which I got from this study. Mind, after all has certain capacity. You can put all nonsense things into that while playing endlessly the video games and things like that or be watching unwanted movies or whatever. You are only spoiling your own mind. So better thing could have been to do something very productive and that helps you get much ahead in life. When I was small, I did not understand this. As I started moving up in life, I understood why my parents insisted that I should learn all those upanishads and other things. Today I find it difficult to even to read and memorize one sloka. It is not so easy. Earlier three or 4 chapters of upanishad we had memorised at one point. Vishnu Sahasranama by heart, so many other things by heart. There could have been some mistakes in the way we were taught, the intonation and all. I am accepting that. I'm saying that still we were taught.

**CS Pracheta**- *My final question today. You are a keen learner and pioneer or front runner in this study group which fortunately we are also part of. You are motivating most of our professionals and the students to have the deep knowledge and discipline which you bring in commendable. What are your thoughts on this learning group which you have?*

**CS Karthick Varadarajan** - Yes, I would like to share this. This will be of lot of value to many people. Way back in the year 2000, I was fortunate to be working with one very senior company secretary who later on became the President of ICSI. It so happened that there was a question which was put to me on FEMA. I fumbled. This was in the year 2000 and believe me, by the standards of those days, I was paid quite well. I did not answer correctly and that was the moment when I questioned myself whether money is important or knowledge is important. If I don't update myself, why is he going to call me again tomorrow. Money is important but what is the basis for that? So I was very fortunate to get this lesson very early. So today also as much as possible, if I have a choice of doing work as compared to learning, I give importance to learning so that is something I have demonstrated.

How it started - in 2013 when the act was announced, September it started in my office only. There are hardly 3-4 of us, we started. I took a very conscious decision that time. I took a decision; I'm not going to make more money. I'm going to study company law - the new Act. Money will come whatever it has to come. My other goals, whatever in life, I love to buy this, I have to do this, I have to construct this, I said all of it - let it wait. It can wait but I have to study. We were hardly three or four people to read up, took turns to read that time. And it continued, then one person took the lead, she said - Sir, we will start studying in the morning. Actually started on her own, she and some of the other friends started. After two days, they requested me, Sir can you join the classes? I said, yes of course. That's how it started.



Now we are here, we found the right people, we got a good combination. It's going on. See we say that profession offers a lot, we say that it can give you a lot of success - I think the statement is incomplete. The profession gives lot of success to those who are ready to take it. I see many are not ready to take it whatever it takes to scale up. So what I have understood so far is there are a few pillars. If you want to build up big practice, it's just like constructing a home. You got to have a good foundation. For me the pillars of success begins with subject knowledge. Unless and until I'm good at any subject, how can I take it, how can I advise the client? I can't do that. Subject knowledge is very important. Then the second, not necessarily in the same order, but I want to say that technology is a pillar. If we don't make use of technology, we are losing out big time. Then the third pillar I would say is soft skills. Your attitude, how you communicate how do you include others in the conversation, how you carry along people. I spoke about being responsible that is also part of the soft skill. How teachable are you? So these are very important. The attitude is one another pillar. I treat the Institute as one more pillar. The Institute of Company Secretaries, for me anything which the institute offers, I think I would take that more happily.

As a student I never went for private coaching. There are teachers who would teach here and there but I say I will go to ICSI and when I started my practice in Bangalore in 2002, I did not have any client. Zero base, because I was a stranger here. I went to the Chapter I said I would like to become a faculty also see what I can do. I can't think of anything else so I thought this is one way I can update my knowledge also and I can teach also and some money would obviously come. It may not be a great money but I'm sure it takes care of some of the basic requirements. Whatever it's a package, I would say. During the bad days I had depended upon institute. During the good days why should I not give back to the institute? So for me, institute is a pillar. Anytime, anybody has a problem, you please go to the institute. You speak to people there. I'm very sure you will find a solution. I'm sure you will find the answers. And what is Institute after all? All of us together. Institute is not a building. We went to CCGRT, it is just a building but all of us make it CCGRT.

*CS Shobha - Really amazing Sir. Amazing journey and thinking also. I'm sure each one of our readers has been touched by whatever you have had to say. The best teachers are those who show you where to look but they don't tell you what to see and you have been an epitome of one of the teachers par excellence for each one of us, who has inspired at every moment and it has motivated us whenever we looked for it. I would like to take this opportunity to thank you for sparing your time and sharing so much of knowledge as well as all the experiences. It has been a tremendously enriching experience for both of us, learning process also I would say. I would like to conclude with a quote from David Frost - Don't aim for success if you want it, just do what you love and believe it and it will come to you naturally. I think that was what was the summing up of whatever you spoke today. Again I take this opportunity to thank you for all what you have said Sir and Pracheta also joins me in thanking you. Thank you so much.*

"A unique opportunity to CS Students  
Dear Students,  
We hope you are going through the interviews with the stalwarts of the profession. You too may have few questions in mind to ask these eminent Company Secretaries. Here is a unique opportunity for you to ask your questions directly to them!!! You have to send us the takeaways from the interview published in this month's magazine (please go through the excerpts published as well as the video link) and send your responses to [enewsletter.icsimysore@gmail.com](mailto:enewsletter.icsimysore@gmail.com). The student who gives us the 'best takeaway/s', will get an opportunity to ask a question to our guest in the next series of the interview."

CS Karthick Varadarajan - Thank you so much once again. I once again thank Mysore chapter. I thank all the editors of this magazine which is amazing. I would like to wish all success to you also. Thank you so much.

*For Complete interview please click below link*

<https://bit.ly/InterviewwithCSKarthickV>



**CS Dr Chandratre**

*Practicing company secretary  
Email id: krchandratre@gmail.com*

## The Law relating to Remuneration of Directors under the Companies Act 2013 as amended up to 18 March 2021

The Law relating to Remuneration of Directors under the Companies Act 2013 as amended up to 18 March 2021 is analyzed and commented by renowned Senior Scholar CS Dr Chandratre for our readers. He gives an in-depth coverage on the topic in great detail. For the convenience of digital reading, the commentary is divided into six parts. Let's have this knowledge feast over six editions and this is the fifth edition. Below is the index to have quick reference. For previous editions please click on the link given in each individual box for that topic.

Edition	Topic Covered	Brief Content
205 - Part I	Managerial Remuneration- Introduction For this topic, click: <a href="http://bit.ly/Edition205">http://bit.ly/Edition205</a>	<ul style="list-style-type: none"> <li>a. Introduction</li> <li>b. Definition of Remuneration</li> <li>c. Over-all limits on remuneration</li> <li>d. Sub-limits of remuneration</li> </ul>
206 - Part II	Remuneration to certain category of Directors For this topic, click: <a href="http://bit.ly/206thEDITION">http://bit.ly/206thEDITION</a>	<ul style="list-style-type: none"> <li>a. Remuneration payable to Non-Executive Directors</li> <li>b. Remuneration to Non-executive Directors when Company has loss or inadequate.</li> <li>c. Fixed periodical payments to Non-Executive Directors</li> <li>d. Remuneration to Independent Directors in case of loss</li> <li>e. Consequence of default of loans</li> </ul>
207 - Part III	Remuneration to MD and WTD For this topic, click: <a href="https://bit.ly/207thedition">https://bit.ly/207thedition</a>	<ul style="list-style-type: none"> <li>a. Sitting fees</li> <li>b. Remuneration to MD, WTD and Manager when a Company has loss or inadequate profits</li> <li>c. Conditions to be complied with</li> </ul>
208 - Part IV	Remuneration to MD and WTD continued For this topic, click: <a href="https://bit.ly/EDITION208">https://bit.ly/EDITION208</a>	<ul style="list-style-type: none"> <li>a. Remuneration to MD, WTD and Manager- From two companies</li> <li>b. Recovery of excess remuneration</li> <li>c. Remuneration to Professional MD/WTD/Manager</li> <li>d. Remuneration for professional service</li> </ul>

209 - Part V	Meaning of Professional and profession	a. Remuneration for professional service continued- Meaning of 'profession' and 'professional'. b. Supportive judgements
210 - Part VI	Applicability to Private Companies	a. Applicability of Section 196 and 197 to Private Companies b. SEBI (LODR), 2015 on Managerial Remuneration

### Meaning of 'profession' and 'professional'

The opinion contemplated by clause (b) of the proviso to section 197(4), has to be based on the 'qualifications' of the person concerned for the practice of the profession; duration of the experience in the relevant profession is not relevant. What is relevant is "requisite qualification for the practice of the profession" in relation to which the director is rendering services to the company.

In both the conditions under the proviso, the expressions 'professional' and 'profession' are used. Neither of these expressions is defined nor is it capable of being defined precisely. As was said in Carr v Inland Revenue Commissioners<sup>1</sup>, it seems to be dangerous to try to define the word "profession". In the same case it was held that the appellant who was a fully qualified optician (a Member of the National Association of Opticians and the Joint Council of Qualified Opticians) was carrying on a profession.

The ordinary meaning of the term 'profession', according to standard dictionaries, is "an occupation, especially one involving training and a formal qualification; a calling requiring specialized knowledge and often long and intensive academic preparation; a vocation requiring knowledge of some department of learning or science; a type of job that needs special training or skill, especially one that needs a high level of education; any type of work which needs special training or a particular skill, often one which is respected because it involves a high level of education; a calling requiring specialized knowledge and often long and intensive academic preparation; a job that needs advanced education and special training."

According to the Black's Law Dictionary, 8th edition, 'profession' means a vocation requiring advanced education and training; and professional means person who belongs to a learned profession or whose occupation requires a high level of training and proficiency.

According to Wharton's Law Dictionary, A profession ordinarily is an occupation requiring intellectual skill, often coupled with manual skill.

### According to Kohlar's Dictionary of Accountancy,

#### "Profession is a vocation

- (a) generally recognized by universities and colleges as requiring special training leading to a degree distinct from the usual degree in arts and sciences,
- (b) requiring principally mental rather than manual or artistic labour and skill for its successful prosecution,
- (c) recognizing the duty of public service, and

<sup>1</sup> (1944) 2 All ER 163

(d) having a code of ethics generally accepted as binding on its members."

A profession in short is an occupation in which a person professes to be skilled or has a professed knowledge of some department of learning or science or the practice of an art founded upon it.

Analytically considered, the attributes which characterize a profession are the application of an intellectual technique to one or other aspects of the affairs of life. Originally, teaching law and medicine were the chief professions, but with the increasing complexity of our social organization, newer intellectual techniques have been evolving leading to the growth of newer professions such as engineering, journalism, accountancy, banking etc. And in the U.S.A. and other industrially advanced countries intellectual techniques are already being evolved in relation to business management, thus bringing it also to the level of a profession.

In the case of a profession the emphasis is more on service than on profit and in the case of a learned profession the emphasis is solely on service, irrespective of profit, while the dominant motive in the case of business and finance is the making of pecuniary gain. In the ethical Code of the American Bar Association, it is stated "A profession has for its prime object the service it can render to humanity, reward or financial gain being a subordinate consideration".

An activity to be a profession must be one carried on by an individual by his personal skill, intelligence and an individual by his personal skill, intelligence and dependent on individual characteristics<sup>2</sup>.

The word used is 'profession' not 'business' or 'occupation'. The meaning of the word is stated in Murray's English Dictionary as 'the occupation which one professes to be skilled in and to follow'. In the context the meaning is not clear; however construed it must include surveyors, architects, lawyers, and doctors. And it may include others such as a banker, a brewer, and any person whose occupation requires skill<sup>3</sup>.

'Profession' means an occupation carried on by a person by virtue of his personal and specialized qualifications, training or skill<sup>4</sup>. The professional is one who professes to have some special skill. A professional impliedly assures the person dealing with him (i) that he has the skill which he professes to possess, (ii) that skill shall be exercised with reasonable care and caution<sup>5</sup>.

A profession ordinarily is an occupation requiring intellectual skill, often coupled with manual skill. Thus, a teacher uses purely intellectual skill while a painter uses both. In any event, they are not engaged in an occupation in which employers and employees cooperate in the production or sale of commodities or arrangement for their production or sale or distribution and their services cannot be described as material services<sup>6</sup>.

In *P. Stanwill and Co. v Commissioner of Income Tax*<sup>7</sup>, the assessee firm was an old firm of auctioneers and the partners thereof had acquired considerable experience in this line; one of them was a qualified engineer which enabled him to

---

<sup>2</sup> *Sakharam Narayan Kherdekar v City of Nagpur Corporation* AIR 1964 Bom 200, 210. [Bombay Shops and Establishments Act (79 of 1948), Section 2(4)].

<sup>3</sup> *Palmer's Company Precedents* 17th edition, Part I, page 104.

<sup>4</sup> *Kodali Kumara Swamy v State of A.P* AIR 1992 AP 170.

<sup>5</sup> *Martin D'souza v Mohd. Ishfaq* (2009) 3 SCC 1; 2009 AIR SCW 1807

<sup>6</sup> *Management of Safdarjung Hospital v Sethi (K.S.)* AIR 1970 SC 1407.

<sup>7</sup> (1952) 22 ITR 316 (All).

do the work of valuing the property and carrying on the business more efficiently than it could be carried on by any person not so qualified. The firm was held to have been engaged in the auctioneer's profession.

Rowlatt, J, in *Christopher Barker & Sons v Inland Revenue Commissioners*<sup>8</sup> said that, "every business man has to use skill and ability in the conduct of his business and therefore, those qualities are not distinguishing marks of a profession. All professions are businesses, but all businesses are not professions, and it is only some businesses which are taken out of the operation of the section, namely, those are professions, the profits of which are dependent mainly upon personal qualifications and in which no capital expenditure is required or only capital expenditure of a comparatively small amount."

It is of the essence of a profession that the profits should be dependent mainly upon the personal qualifications of the person by whom it is carried on<sup>9</sup>.

Scrutton, LJ, in *Commissioners of Inland Revenue v Maxse*<sup>10</sup> attempted, though with considerable diffidence, to define what is a "profession" and said: "I am very reluctant finally to propound a comprehensive definition. A set of facts not present to the mind of the judicial propounder, and not raised in the case before him, may immediately arise to confound his proposition. But it seems to me, as at present advised, that a 'profession' in the present use of language involves the idea of an occupation requiring either purely intellectual skill or if any manual skill, as in painting and sculpture, or surgery, skill controlled by the intellectual skill of the operator, as distinguished from an occupation which is substantially the production, or sale, or arrangements for the production or sale of commodities. The line of demarcation may vary from time to time. The word 'profession' used to be confined to the three learned professions – Ministry, Medicine and Law. It has now, I think, a wider meaning."

In *Currie v Commissioners of Inland Revenue*<sup>11</sup> it was pointed out that "whether a man was carrying on a 'profession' or a 'business' depended upon the circumstances of the case and there might be circumstances in which nobody could arrive at any other conclusion than that what the man was doing was carrying on a profession; and therefore, looking at the matter from the point of view of a judge directing a jury, the judge would be bound to direct them that on the facts they could only find that he was carrying on a profession. That reduces it to a question of law. On the other hand, there might be facts on which the direction would have to be given the other way. But between those two extremes there was a very large tract of country in which the matter became a question of degree; and where that was the case the question was undoubtedly, in his opinion, one of fact; and if the Commissioners came to a conclusion of fact without having applied any wrong principle, then their decision was final upon the matter."

A certain amount of skill and knowledge is required in every business; in a profession it is required in a large degree though that may not be the sole criterion for judging whether a particular business is a profession or not<sup>12</sup>.

The Supreme Court has held that, if we draw a distinction between occupation and profession we can see that an occupation is a principal activity (job, work or calling) that earns money (regular wage or salary) for a person and a

---

<sup>8</sup> (1919) 2 KB 222

<sup>9</sup> *William Esplen Son & Swainston, Limited v Commissioners of Inland Revenue* (1919) 2 KB 731.

<sup>10</sup> (1919) 1 KB 647; (1919) 12 Tax Cas. 41.

<sup>11</sup> (1912) 2 KB 332

<sup>12</sup> *P. Stanwill And Co. v Commissioner of Income Tax* (1952) 22 ITR 316 (All)



profession is an occupation that requires extensive training and the study and mastery of specialized knowledge, and usually has a professional association, ethical code and process of certification or licensing. Classically, there were only three professions: ministry, medicine and law. These three professions each hold to a specific code of ethics, and members are almost universally required to swear some form of oath to uphold those ethics, therefore "profession" to a higher standard of accountability. Each of these professions also provides and requires extensive training in the meaning, value and importance of its particular oath in the practice of that profession. A member of a profession is termed a professional. However, professional is also used for the acceptance of payment for an activity. Also, a profession can also refer to any activity from which one earns one's living, so in that sense sport is a profession<sup>13</sup>.

**In another judgment, the Supreme Court has held that a doctor is a professional and not a workman under the Industrial Disputes Act, 1947<sup>14</sup>. In this case, the Supreme Court said:**

"We are of the view that a medical professional, treating patients and diagnosing diseases cannot be held to be a "workmen" within the meaning of Section 2(s) of the ID Act. Doctors' profession is a noble profession and is mainly dedicated to serve the society, which demands professionalism and accountability. Distinction between occupation and profession is of paramount importance. An occupation is a principal activity related to job, work or calling that earns regular wages for a person and a profession, on the other hand, requires extensive training, study and mastery of the subject, whether it is teaching students, providing legal advice or treating patients or diagnosing diseases. Persons performing such functions cannot be seen as a workman within the meaning of Section 2(s) of the ID Act."

#### **Applicability of section 188**

When a company opts for payment of remuneration to a director in terms of the proviso to subsection (4) of section 197, it would attract the provisions of section 188 because, firstly, a director is a related party under the definition in section 2(76), and secondly, clauses (d) [availing or rendering of any services] and (f) [related party's appointment to any office or place of profit in the company, its subsidiary company or associate company] would be attracted.

If section 188(1) read with the Rule the Company requires shareholders' approval, it may pass such a resolution at a general meeting or by postal ballot. In such a case, except Dr Shah, all other related parties can vote on the resolution.

However, the Company can take advantage of the exception under the fourth proviso to subsection (1), namely any transaction entered into by the company in its ordinary course of business other than transactions which are not on an arm's length basis. The fact the services rendered by the director to the company are relevant and useful to the company's business would make the services availed of in the ordinary course of business, and if the remuneration is at arm's length having regard to all relevant factors (including the director's qualifications, experience and expertise). The committee or the board of directors should address this aspect of the matter and take a conscientious decision. Once the committee/board reaches such decision, the case would stand excluded from section 188 and no compliance with the requirements under the section would be necessary.

---

<sup>13</sup> Muir Mills Unit of N.T.C. (U.P.) Ltd. v Swayam Prakash Srivastava 2007 AIR SCW 58: AIR 2007 SC 519: (2007) 1 SCC 491.

<sup>14</sup> ESIC Medical Officers' Association v ESIC AIR 2014 SC 1259.

## Suggested Resolutions

[to be modified to suit a particular case]

**Nomination and Remuneration Committee's resolution to approve payment of remuneration for professional services**

### RESOLVED THAT-

The Committee approves the appointment of Mr----, Advocate, as legal advisor on a retainer basis for a period of five years to advise the company on Direct Taxation on an annual retainer of Rs.-----, for a period of ... year/s, to advise the Company with respect to the Legal matters concerning the business and affairs of the Company;

The Committee forms the opinion, in pursuance of the Proviso to subsection (4) of section 197, that Mr. ...., Advocate, holds .... Degree in .... holds the requisite qualification to practise the profession of law;

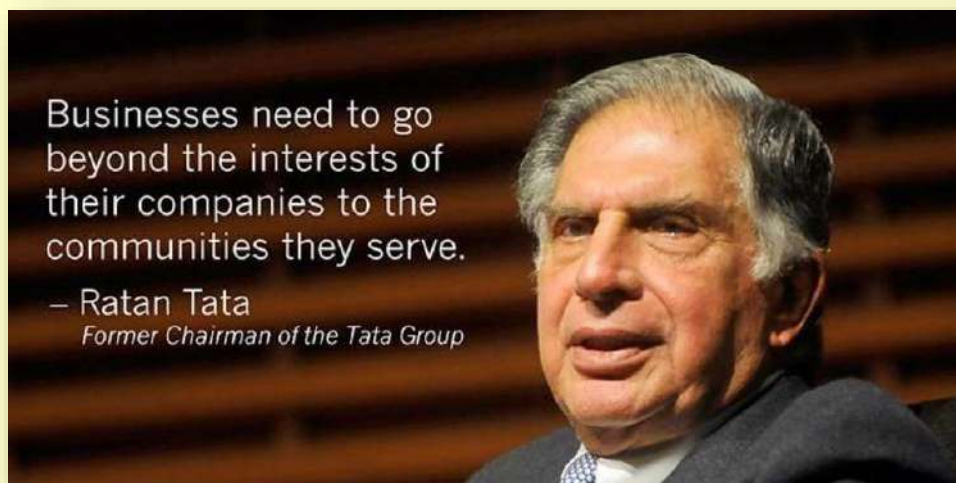
The Board approves the draft agreement to be entered into with Mr. .... The Managing Director/Company Secretary are authorized severally to execute the Agreement for the Company.

**Board resolution to approve payment of remuneration for professional services**

### RESOLVED THAT-

The Board approves, in pursuance of the recommendation of the Nomination and Remuneration Committee, the appointment of Mr----, Advocate, as Legal Advisor on a retainer basis for a period of five years to advise the company on Direct Taxation on an annual retainer of Rs.-----, for a period of ... year/s, to advise the Company with respect to the Legal matters concerning the business and affairs of the Company;

The Board approves the draft agreement to be entered into with Mr. .... The Managing Director/Company Secretary are authorized severally to execute the Agreement for the Company.



# KEY TAKE AWAY

## LLP (Amendment) Act, 2021



**CS Divesh Goyal**  
Practicing Company Secretary  
Email ID: csdiveshgoyal@gmail.com

In the Budget 2021, our hon'ble financial minister announced about Amendment in LLP Act. In continuation of same, Ministry of Corporate Affairs issued a press release on 03rd February 2021.

<https://pib.gov.in/PressReleasePage.aspx?PRID=1694837>

Further in continuation of the same Wednesday, 28th July, 2021 Cabinet has passed LLP Amendment Bill, 2021. This will be the first time that changes are being made to the Act since it came into effect in 2009. They have made 29 amendments to LLP Act 2008 by LLP Amendment Bill 2021.

Both house of Parliament has approved LLP Amendment Bill, 2021. Finally, the same got approval of President of the India on 13th August 2021 and became LLP Amendment Act, 2021. This is Act no. 31 of 2021. This Amendment Act shall amend the LLP Act, 2008.

### Date of Applicability

It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act

### PURPOSE OF AMENDMENT IN VERSION:

- a) The government looks to improve ease of doing business and encourage start-ups.
- b) To encourage business class to incorporate LLP's.
- c) To make it popular for Startups
- d) Conversion of Partnership firms into LLP's
- e) To remove the fear of criminal prosecutions for non- substantive minor and procedural omissions and commissions in the normal course of their business transactions.
- f) The objective of the De-criminalization exercise is to remove criminality of offences from business laws where no malafide intentions are involved

### KEY AMENDMENTS

1. **Definition of Business:** business includes every trade, profession, service and occupation except any activity which the Central Government may, by notification, exclude

NEW CONCEPT: New definition added in LLP Act.

2. **SMALL LLP**

“Small Limited Liability Partnership” means a limited liability partnership–

- i. the contribution of which, does not exceed twenty-five lakh rupees (Rs. 25,00,000/-) or such higher amount, not exceeding five crore rupees, as may be prescribed; and

- ii. the turnover of which, as per the Statement of Accounts and Solvency for the immediately preceding financial year, does not exceed forty lakh rupees (Rs. 40,00,000/-) or such higher amount, not exceeding fifty crore rupees, as may be prescribed; or
- iii. which meets such other requirements as may be prescribed and fulfils such terms and conditions as may be prescribed.

**3. Resident of India: (Section 7(1) Explanation)- Meaning of Resident of India for the purpose of Designated Partner**

The term resident in India means a person who has stayed in India for a period of not less than One hundred Twenty days (120) during the financial year.

**Effect:** Now a person who is resident in India for just 120 days in financial year can be appoint as designated partner.

**4. Names which are not allowed: (Section 15(2)(b))- About non availability of name.**

No limited liability partnership shall be registered by a name which, in the opinion of the

- Central Government is identical or
- too nearly resembles to that of any other limited liability partnership or
- a company or a registered trademark of any other person under the Trademarks Act, 1999.”

**5. Change of name of limited liability partnership: (Section 17)- This section fully substituted, and Section 18 fully omitted.**

- In case of same Name Central Govt may direct to change the name within 3 months.
- Trademark owner can make application within 3 months from the date of Incorporation.

**6. Accounting and auditing standards: (Section 34A)- This is a New Section inserted after Section 34.**

“34A. The Central Government may, in consultation with the National Financial Reporting Authority constituted under section 132 of the Companies Act, 2013,—

- (a) prescribe the standards of accounting; and
- (b) prescribe the standards of auditing,

as recommended by the Institute of Chartered Accountants of India constituted under section 3 of the Chartered Accountants Act, 1949, for a class or classes of limited liability partnerships.”

**7. Compounding of offences: (Section 39)- This section fully substituted.**

- □ the Regional Director or any other officer not below the rank of Regional Director authorized by the Central Government may compound any offence under this Act which is punishable with fine only a sum which may extend to the amount of the maximum fine provided for the offence but shall not be lower than the minimum amount provided for the offence
- □ it is hereby clarified that any second or subsequent offence committed after the expiry of the period of three years from the date on which the offence was previously compounded, shall be deemed to be the first offence.
- □ Every application for the compounding of an offence shall be made to the Registrar who shall forward the same, together with his comments thereon, to the Regional Director.

**8. Establishment of Special Court: (Section 67A)- This is New Section inserted after Section 67.**

The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts.

**Procedure and powers of Special Court: (Section 67B)- This is a New Section inserted after Section 67A.**

- all offences specified under sub-section (1) of section 67A shall be triable only by the Special Court established or designated for the area in which the registered office of the limited liability partnership is situated in relation to which the offence is committed.
- where there are more than one Special Courts for such area, by such one of them as may be specified in this behalf by the High Court concerned

**9. Appeal and Revision: (Section 67C)- This is New Section inserted after Section 67B.**

The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Sessions trying cases within the local limits of the jurisdiction of the High Court.”

**10. Registration offices: (Section 68A)- This is New Section inserted after Section 68.**

For the purpose of exercising such powers and discharging such functions as are conferred on the Central Government by or under this Act or under rules made thereunder and for the purpose of registration of limited liability partnerships under this Act, the Central Government shall, by notification, establish such number of registration offices at such places as it thinks fit, specifying their jurisdiction. ETC.

**11. Payment of additional fee: (Section 69)- This section fully substituted.**

A different fee or additional fee may be prescribed for different classes of limited liability partnerships or for different documents or returns required to be filed under this Act or rules made thereunder

**12. Jurisdiction of Tribunal and Appellate Tribunal: (Section 72(2))- This subsection fully substituted.**

- Any person aggrieved by an order of Tribunal may prefer an appeal to the Appellate Tribunal
- Provided that no appeal shall lie to the Appellate Tribunal from an order made by the Tribunal with the consent of parties.

**13. Penalty on non-compliance of any order passed by Tribunal: (Section 73)- This section fully omitted.**

**14. General Penalties: (Section 74)- This Section fully substituted.**

If a limited liability partnership or any partner or any designated partner or any other person contravenes any of the provisions of this Act or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in this Act, the limited liability partnership or any partner or any designated partner or any other person, who is in the default, shall be liable to a penalty of five thousand rupees and in case of a continuing contravention with a further penalty of one hundred rupees for each day after the first during which such contravention continues, subject to a maximum of one lakh rupees.”

**15. Adjudication of penalties: (Section 76A)- This is a New Section inserted after Section 76.**

- the Central Government may, by an order published in the Official Gazette, appoint as many officers of the Central Government, not below the rank of Registrar, as adjudicating officers



- The Central Government shall, while appointing adjudicating officers, specify their jurisdiction in the order.

**16. Jurisdiction of Courts: (Section 77)- This Section fully substituted.**

- The Special Court referred to in clause (a) of sub-section (2) of section 67A shall have jurisdiction and power to impose punishment under section 30 of the Act
- the criminal cases against the limited liability partnership or its partners or designated partners or any other person in default filed under this Act and pending before the court of Judicial Magistrate of the first class or Metropolitan Magistrate, as the case may be, shall be transferred to the Special Court

**17. Cognizance of offences: (Section 77A)- This is a New Section inserted after Section 77A.**

No court, other than the Special Courts referred to in section 67A, shall take cognizance of any offence punishable under this Act or the rules made thereunder save on a complaint in writing made by the Registrar or by any officer not below the rank of Registrar duly authorized by the Central Government for this purpose.

**18. Power to make rules: (Section 79)- there are additions/ substitutions in sub section 2.**

- i. for clause (a), the following clauses shall be substituted, namely:— “
  - the contribution of such higher amount under sub-clauses (i) and (ii) of clause (ta) of section 2;
  - (aa) the terms and conditions to be fulfilled by class or classes of limited liability partnerships under long line to clause (ta) of section 2;
  - (ab) the form and manner of prior consent to be given by designated partner under sub-section (3) of section 7;

**19. Power to remove difficulties: (Section 80)- After sub section 1 new sub section 1A inserted:**

(1A) Notwithstanding anything contained in sub-section (1), if any difficulty arises in giving effect to the provisions of this Act as amended by the Limited Liability Partnership (Amendment) Act, 2021, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as may appear to it to be necessary for removing the difficulty:

Provided that no such order shall be made under this section after the expiry of a period of three years from the date of commencement of the Limited Liability Partnership (Amendment) Act, 2021.”.

**20. Transitional provisions: (Section 81)- This section fully omitted.**

**PENALTY:**

- I. **Section 10: Punishment for contravention of sections 7, 8 and 9**  
Penalty clauses amended in Section 10
- II. **Section 13: Registered office of limited liability partnership and change therein**  
Penalty clauses amended in Section 13
- III. **Section 21: Publication of name and limited liability**  
Penalty clauses amended in Section 21
- IV. **Section 25: Registration of changes in partners**  
Penalty clauses amended in Section 25

- V. **Section 30: Unlimited liability in case of fraud**  
Penalty clauses amended in Section 30
- VI. **Section 34: Maintenance of books of account, other records and audit, etc**  
Penalty clauses amended in Section 34
- VII. **Section 35: Annual Return**  
Penalty clauses amended in Section 35
- VIII. **Section 60: Compromise, or arrangement of limited liability partnerships**  
Penalty clauses amended in Section 60
- IX. **Section 62: Provisions for facilitating reconstruction or amalgamation of limited liability partnerships**  
Penalty clauses amended in Section 62
- X. **Section 74: General penalties**

**Penalty clauses amended in Section 72**

**Disclaimer:** The entire contents of this document have been prepared based on relevant provisions and as per the information existing at the time of the preparation. Although care has been taken to ensure the accuracy, completeness, and reliability of the information provided, I assume no responsibility, therefore. Users of this information are expected to refer to the relevant existing provisions of applicable Laws. The user of the information agrees that the information is not a piece of professional advice and is subject to change without notice. I assume no responsibility for the consequences of the use of such information.

**IN NO EVENT SHALL I BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL OR INCIDENTAL DAMAGE RESULTING FROM, ARISING OUT OF OR IN CONNECTION WITH THE USE OF THE INFORMATION**



**"A unique opportunity to CS Students and Members"**

**Dear Members and Students**

**If you want to Participate in the ICSI MysuruRoyalPro Toastmasters Club and to write articles in the Mysuru Chapter eMagazine please send us an email to**

**[newsletter.icsimysore@gmail.com](mailto:newsletter.icsimysore@gmail.com)**

# Annual Compliances under IBC 2016 & Labour Laws



**CS Lalit Rajput**

Practicing Company Secretary  
Email ID: lalitrajput537@gmail.com

-continued from previous edition

## IV. Compliance Requirements under IBC, 2016 an Overview

Sl. No	Provisions and Particulars	Timelines	Remarks
1	IBBI circular dated 14th August 2018: Submission of Form IP-1	Within 3 days of giving consent	submitted at online portal of IBBI
2	Regulation 7(2) (c) of IP Regulations Membership Fees Pay to the Board every five years after the year in which the certificate is granted and such fee shall be paid	on or before the 30th of April of the year it falls due	Every 5 years
3	Regulation 7(2) (ca) of IP Regulations Professional fees Pay to the Board, a fee calculated at the rate of 0.25% of the professional fee earned for the services rendered by him as an insolvency professional in the preceding Financial Year	on or before the 30th of April of every year	Form E along with fee at online portal of IBBI
4	Bye law 11 of Bye- Laws of ICSI Institute of Insolvency Professionals: Annual Membership fees: The Agency may require the professional members to pay a fixed sum of money as its annual membership fee.	Up to 30th June for every year	
5	Regulation 7(2) (g) of IP Regulations Maintenance of records: Maintain records of all assignments undertaken by him under the Code.	For at least 3 years from the completion of such assignment	

6.	Section 208 (2)(d) & Clause 1.9(A) of monitoring policy of ICSI IIP:  Part IV of time based reporting platform Details of claims of creditors	Within 15 days of demitting office as IRP	To be submitted at online portal of ICSI IIP
7.	Regulation 7A of IP Regulations & Clause 23 of Schedule of First Schedule of Code of Conduct of IP regulations:  An Insolvency professional must not engage in any employment when he holds a valid authorization for assignment or when he is undertaking an assignment	During the CIRP and Liquidation process	

#### IV. Labour Law Compliances

Labourers are the backbone for every organization and are also covered in the Concurrent List of the Constitution of India. Labour Laws are framed to provide decent working conditions and improved quality of life of workers, ensuring India without child labor in hazardous sectors and enhancing employability through employment services and skill development on a sustainable basis.

Sl. No.	Name of the Act(s)	Compliance Particulars
1.	<b>Factories Act, 1948</b>	<ul style="list-style-type: none"> <li>• Annual returns and half year returns submitted on time with correct details</li> <li>• All story statutory registers are maintained</li> <li>• Appointment of Safety Officer, Welfare Officer, if applicable, and its qualification matching as per the act</li> <li>• Canteen, Creche, rest room facilities are available</li> </ul>
2.	<b>Contact Labor Act, 1970</b>	<ul style="list-style-type: none"> <li>• First check if this act is applicable to factory and to contractor. General rules say it is applicable for more than 20 contract workers. But it differs from state to state</li> <li>• Principal Employer Registration, all contractors are listed on RC</li> <li>• Contractors have valid License</li> <li>• Contractor have submitted all dues like PF, ESIC, PT, LWF on time.</li> </ul>

3	<b>Payment of Gratuity Act, 1972:</b>	<ul style="list-style-type: none"> <li>• Gratuity is paid to employees who have completed 5 years</li> <li>• Companies have authorized one managerial personnel in organization to receive all notice, letter, communication, etc.</li> </ul>
4.	<b>Payment of Wages Act, 1936 and Minimum Wages Act, 1948:</b>	<p>Have to make sure,</p> <ul style="list-style-type: none"> <li>• All registers are maintained</li> <li>• Payment of Wages are done on time.</li> <li>• Wages are paid above minimum wages.</li> </ul>
5.	<ul style="list-style-type: none"> <li>• Provident Fund (PF)</li> <li>• Employees State Insurance Corporation (ESIC)</li> <li>• Professional Tax (PT)</li> </ul>	<ul style="list-style-type: none"> <li>• Companies have to issue UAN, ESIC card to all employees</li> <li>• All dues paid on time</li> </ul>
6.	<ul style="list-style-type: none"> <li>• Industrial Standing Order</li> </ul>	<ul style="list-style-type: none"> <li>• Standing orders are certified from Certifying officer</li> <li>• All the provision of standing order are complied with.</li> </ul>
7.	<b>Apprentices Act, 1961</b>	<ul style="list-style-type: none"> <li>• Birth proof of apprentice should be kept</li> <li>• Medical certificate of apprentice by Medical Practitioner is required</li> <li>• Regular attendance registers are required for checking working hours, overtime leave and holidays.</li> <li>• Agreement letter and joining letter is to be kept</li> <li>• Stipend statement is requested by the employer</li> <li>• Attendance register should be maintained</li> </ul>
8.	<b>Employees Compensation Act, 1923</b>	<ul style="list-style-type: none"> <li>• The mode of payment of compensation by company in case of injury of the employee by accident arising in course of employment should be disclosed by submitting the required Document for eg. In case of Payment is being made by cheque, the copy of the cheque is Required or any other document through which payment can be cross verified.</li> <li>• Register of Notice of Accidents should be maintained</li> <li>• The Documentary Proof of the Reporting document to the commissioner in case of fatal injury in Form E as per Section 10B read with Rule 11</li> </ul>

		<ul style="list-style-type: none"> <li>• Copy of receiving the compensation by the Commissioner are Required also copies of Form No - A as per Section 8(1) read with Rule 6(1)</li> <li>• Certified copies of Form D is applicable as per Section 8(2) read with Rule 9</li> <li>• Copies of Form K, L, M and copies application submitted to the commissioner. (On settlement of compensation amount in between company and workman, company executed a memorandum of agreement with the workman in Form No. K, L or M, as the case, may be and submitted such agreement along with an application to register it to the Commissioner, as prescribed in Rule 48)</li> </ul>
9.	<b>Maternity Benefits Act, 1961</b>	<ul style="list-style-type: none"> <li>• If the employer has knowingly employed a woman in any establishment during the six weeks immediately following the date of her delivery, miscarriage or medical termination of her pregnancy, written declaration from the employer and reasons thereof for such employment is required.</li> <li>• Whether or not a pregnant woman has made any request not to give her service which is of a hazardous nature or which involves long hours of standing etc. during the period of one month immediately preceding the period of six weeks, before the date of her expected delivery.</li> <li>• If any woman employee is entitled for maternity benefit, medical bonus and nursing break and if yes, whether payment has been made and nursing break was allowed in accordance with the Act, and the documentary evidence of the same.</li> <li>• The employer exhibited the abstract of the provisions of the Act and the rules made thereunder in accordance with Section 19 of the Act.</li> <li>• Whether the employer has maintained muster roll, register and records as prescribed, if any, by the appropriate Government.</li> </ul>

- **Compliance Requirements under The Code on Wages, 2019**

The Code on Wages Bill, 2019 (received the assent of President on 8th August 2019) is a historic Bill which aims to transform the old and obsolete labour laws into more accountable and transparent ones which is need of the hour and universalizes the provisions of minimum wages and timely payment of wages to all employees irrespective of the sector and wage ceiling. The Code on Wages Bill, 2019 subsumes relevant provisions of:

- a) The Minimum Wages Act, 1948,



- b) The Payment of Wages Act, 1936,
- c) The Payment of Bonus Act, 1965 and
- d) The Equal Remuneration Act, 1976.

**Key Compliance Requirements in brief:**

**i. Minimum Wages**

No employer shall pay to any employee wages less than the minimum rate of wages notified by the appropriate Government.

Overtime Wage Rate: the rate has been fixed at twice the normal rate of wages for the hours worked in excess of the normal working hours.

**ii. Payment of Wage**

The Payment of wages shall be made in currency notes or by cheque or by crediting the wages in the bank account of the employee or by the electronic mode, except for certain specified establishments, wages shall be paid only by cheque or by crediting the wages in his bank account.

**Time limits for payment of wages for respective wage periods:**

Sl. No.	Wage Period	Time Limits
1	For daily basis	at the end of the shift
2	For weekly basis	on the last working day of the week
3	For fortnightly basis	before the end of the second day after the end of the fortnight
4	For monthly basis	before the expiry of the seventh day of the succeeding month
5.	Miscellaneous Cases: <ul style="list-style-type: none"> <li>• removed or dismissed from service; or</li> <li>• retrenched or has resigned from service, or</li> <li>• unemployed due to closure of the establishment,</li> </ul>	within two working days of his removal, dismissal, retrenchment or, as the case may be, his resignation

**iii. Deductions from Wages**

- Only authorized deduction allowed as mentioned under the Code.
- The total amount of deductions in any wage period shall not exceed 50% of such wages otherwise the excess deductions may be recovered in such manner, as may be prescribed.

**iv. Revision of Minimum Wage**

Minimum Wages shall be revised/reviewed at the interval of not exceeding 5 years.

**v. Prohibition of discrimination**

The Code expressly prohibits any discrimination on the basis of gender.

**vi. Fines and Penalty Provisions:**

- The total amount of fine which may be imposed in any one wage-period on any employee shall not exceed an amount equal to 3% of the wages payable to him in respect of that wage-period.
- No fine shall be imposed on any employee who is under the age of 15 years.
- No fine imposed on any employee shall be recovered from him by installments or after the expiry of 90 days from the day on which it was imposed

**vii. Particulars about payment of Bonus:**

- Eligibility: establishments in which 20 or more persons are employed or were employed on any day during an accounting year, drawing wages not exceeding the notified threshold.
- The limitation period for filing the claims for minimum wages, bonus, equal remuneration etc., by workers has been raised to 3 years as against the varying period between 6 months to 2 years
- the Code additionally provides that dismissal from service due to conviction for sexual harassment would also be considered as a ground for disqualification for receipt of bonus under the Code.

**viii. Preparation of Records and Registers**

All the employers are required to maintain registers under this code containing details including the details of the employees, the wages payable to the employees, muster rolls and any such other details as prescribed by the rules.

**The Code on wages, 2019, Ensure that:**

- i. "Right to Sustenance" for every worker and intends to increase the legislative protection of minimum wage from existing about 40% to 100% workforce.'
- ii. every worker gets minimum wage which will also be accompanied by increase in the purchasing power of the worker thereby giving fillip to growth in the economy.

**Conclusion:**

The compliance of Corporate Laws which includes Company Laws, Securities Laws, Economic Laws, Taxation Law and Intellectual Property Laws etc. are very important for good corporate governance. All the records and disclosures should be made properly and kept in the custody of Properly Authorized Officer of the Company.



# Startups Eyeing the Capital Market



**CS V. Namita**

*Email id: namita456@gmail.com*

*Practicing company secretary*

Going public is one of the key milestones in the life of a Company. Companies require huge funds to finance their expansion needs. IPO is certainly a very important way to raise the money. It not only helps in sourcing capital but also builds a brand for the Company in the market along with attracting new investors.

If we look at the present scenario, Indian startups have opened the floodgates of IPOs. Digitization has provided an impetus to the startup ecosystem in India. Technology has been a game changer for the Indian economy.

Coming to the compliance part, market regulator SEBI has now made it easier for startups to go public in India. The listing norms have been eased.

SEBI has reduced the time frame from two years to one as the time early-stage investors need to hold 25% of pre-issue capital and allowing IPO-bound startups to allocate up to 60% of the issue size to any eligible investor with a lock-in of 30 days on such shares.

The markets regulator also relaxed the threshold trigger for open offers from the existing 25% to 49% for startups, except in the situations where there is a change in management control of the target company.

The mindset of the investors also has seen a great change. Earlier, stock markets responded to the IPOs based on the Company's performance and track record. However, if we look at the recent scenario, Zomato's IPO has been a game changer. Zomato was thought of as a profit-challenged company. The overwhelming response by the investors helped the company's stock soar.

Zomato is among a batch of startups that had planned for an IPO. Recently, Zomato had went public. The success of this IPO is fueling other startups to go public soon.

## **What went right for ZOMATO?**

Food delivery business grew manifold amid the pandemic as home-bound consumers took to online ordering of food. In the run-up to get listed, Zomato converted itself from a Private Company into a public Company. It should be noted that a public company can no longer be a start-up. The food delivery company became the nation's first unicorn to make its stock-market debut, raising US\$1.3 bn with backing from Morgan Stanley, Tiger Global, and Fidelity Investments.

Seeing this success, other startups too are in line for IPOs. Let's look at some of these Companies too.

### **1. BYJU's**

India's only edtech unicorn, and its founder is the newest member of the country's coveted billionaire's club. A unicorn is a privately held start-up company valued at over US\$1 bn.

Ed-tech companies like Byju's have been offering courses online itself, but this pandemic gave a fresh impetus to them. The pandemic has been a blessing in disguise for the ed-tech companies like Byju's. With the lockdown in

place, many consumers have turned to online services - be it for grocery deliveries and other e-commerce, and with schools and colleges being closed, education has gone online.

Byju's has raised more than 7 thousand crore funds through investments. Apart from this, DST Global has invested Rs 900 crore in the company. Today Byju's has received funding from many of the firms like Sequoia Capital India, Chan Zuckerberg Initiative (CZI), Tencent, Sofina, Lightspeed Venture Partners, Brussels-based family office Verlinvest, development finance institution IFC, Napsters Ventures, CPPIB and General Atlantic.

The company has been on a fundraising spree, garnering about \$910 million from a clutch of investors through 2020 and early 2021. It is learnt that Byju Raveendran led ed-tech firm Byju's is aiming to go for an IPO in the next 18-24 months.

## 2. Paytm

Paytm, the country's leader in digital payments, filed its preliminary IPO documents, aiming to raise as much as Rs 16,600 crore. It is touted to be the biggest IPO in India in the decade. As of now, Paytm is the second most valued Indian startup.

In its draft filing, Paytm said it currently is a "foreign-owned and controlled" company and will continue to be so after the IPO, in accordance with the consolidated FDI policy and foreign exchange rules and "accordingly we shall be subject to Indian foreign investment laws".

Paytm also confirmed in its DRHP filing that it has applied to the RBI for a new umbrella entity (NUE)

licence to set up a new retail payments body. This will be done through a group subsidiary, Foster Payments Network Ltd., with nine other consortium partners.

However, a rule introduced by the RBI in June 2021 prohibits any investor in a country that does not comply with the rules of the Financial Action Task Force (FATF) from owning more than 20% voting rights in a payment system operator. This rule could act as roadblocks for future investments in the NUE.



## 3. NYKAA:

It is a one stop destination for all beauty and wellness products. An Indian lifestyle cosmetic brand catering to the needs of young urban women. The company has expanded from online-only to an omnichannel model to sell the products.

Nykaa is the largest in its space in India. It has filed DRHP (Draft Red Herring Prospectus) with the market regulator for its public offer. The unicorn start-up is expected to hit with an IPO. Nykaa had raised Rs 100 crore in 2020 from existing investors Steadview Capital and its valuation was then pegged at \$1.2 billion.

According to the DRHP, the company is raising Rs 525 crore via fresh equity. Promoters and investors will be selling upto 43.1 million equity via offer for sale.

The lockdown had a little negative impact on the e-tailer as a significant portion of the market began shifting to digital means.

## 4. OYO:

Oyo Hotels and Homes, the hospitality company will soon go for an IPO. Oyo is seeing a revival in business in markets such as India and Europe as the number of Covid-19 cases have been falling and vaccination rate improving. Oyo had secured a \$660-million debt financing from global institutional investors to service its existing loans. Wall Street investors like Fidelity, Citadel Capital Management and Varde Partners have subscribed to Oyo.

Other companies looking to go public include Policy Bazaar, Grofers and Delivery are already working on that front. It can be said that the country's most valuable startups are all considering or planning IPOs. Flipkart, the Indian e-commerce giant controlled by Walmart Inc., is also aiming for an IPO.

It is good to see the Indian startups exploring the stock market. With all these brands becoming a house hold name, public is also keen to invest in them. Finally, we can see that 2021 is the year of IPOs in the Indian economy.



## Work from Home the New Normal Post Covid - A HR Perspective



**CS S. Ravishankar**

Email Id: [ravishankar@asrandco.com](mailto:ravishankar@asrandco.com)  
Practicing company secretary

Being positive is the most negative word in the year 2020, with heavy casualties and new sickness around the world and overwhelming health care facilities life has become scary and very depressing. Many companies shut down their offices and have asked their employees to work from home to control the infection.

Will one of the lasting impacts of the coronavirus (COVID-19) pandemic see remote working become the new normal? While everyone is happy with this arrangement in the short run, conflicts between the employer and employee will arise in the long haul as there are no laws in India governing WFH.

With not much of lockdown and relaxation in unlocking of all facilities and mass vaccinations this year, life in India is returning to normalcy slowly and has returned in many ways to as it was pre-Covid-19 - with exceptions of social distancing, face masks & sanitization.

When lockdown was introduced in many parts of the country in 2020 and 2021, businesses had to quickly transfer staff to remote working and remote working has become the norm as on date with many companies still under the work from home (WFH) policy.

During 2020 when the country was in the grips of a pandemic, at first, the workers were sent home to work remotely in a bid to contain the virus, it was mainly as a temporary/emergency measure. However, as the months go on, it is

becoming more of a permanent arrangement with many employers not intending to undertake a full return to the office. Furthermore, many employees will be keen to retain an element of remote working into the future as well, even when things go back to "normal".

Under the circumstances the employment law needs a revisits and considerations relating to remote working needs to be included with strict legal requirement for employers to keep records of working hours and breaks taken and employees' mental health and safety considerations arising for employers who have remote workers, and the extent of an employer's obligations regarding the home office.

#### **Disadvantages of Work from Home concept**

- **Collaboration:** there are many disciplines that rely on collaboration and team working in the same physical environment that video conferencing cannot recreate. The ad hoc sharing of ideas and discussions with colleagues and clients is not possible.
- **Social connections:** many working from home have built up 'social capital' with colleagues and clients before lockdown, and that social capital would decline as time goes on. Maintaining and creating relationships is more difficult remotely.
- **Development:** remote working is more difficult for junior staff to manage, with much practical training and support required and tending to be received from working closely with senior colleagues.
- **Separation:** home working can create problems for parents juggling care for children with work commitments, and the lack of separation of work and home lives can also adversely affect wellbeing.
- **Data protection:** there is a recognition that processing personal data is more secure within a secured office space compared with the home environment.
- **Leases:** many businesses are contractually committed to lease terms of a certain number of years and unless the lease expiry is in sight, firms are keen to make use of office space they are obliged to pay rent for in the short to medium term.

Since disadvantages are plenty, it can be said that physical office space remains a necessity for firms to operate successfully in the long run, and in the converse, it is also necessary that flexibility around work from home (remote working) becomes integral to the working practice and wellbeing of staff.

Can employers require employees to undertake mandatory COVID-19 tests?

Assuming for a minute that all offices are open & things go back to normal, in order to detect and cut any invisible transmission chains of COVID-19 in the community, many developed countries and India as well, have launched testing & Community Programme providing one-off free testing services to all residents.

This service gave rise to controversies due to concerns about the accuracy of the testing results, and the involvement of qualified medical personnel.

Although Community Testing is to be voluntary, can such testing be made mandatory by employers seeking employees to present negative test results as proof that they are virus free as part of their return-to-office policy??



Community testing or specific Covid Tests (RTPCR) to be undertaken by employees must be entirely voluntary in nature. The employers cannot force the employees to undergo such tests, and this may be illegal in the current context, the employers do not have such statutory rights under the India Labour Laws, therefore, although employers may ask employees to do the tests, they cannot compel them to do so if they refuse. Same holds good even for the vaccination, the employer cannot force any employee to get vaccinated if he is unwilling.

Most of the employment contracts may contain an express provision allowing the employer to direct an employee to attend medical examinations. Usually, this is for the employer to assess whether an employee is fit to return to work following a work injury or if the employee has been on extended or frequent sick leave. If an employee's employment contract contains such a provision, the employer may potentially rely on this contractual clause to require the employee to undergo a COVID-19 test.

Alternatively in the absence of any such contractual right to compel an employee to do the test, the employers can take a stand that protection of employee safety and health as a 'lawful and reasonable' ask, and therefore the direction by the employer seeking employees to undergo the COVID test and produce negative test results as proof that they are virus free could stand the test of Law and could potentially be considered a 'lawful and reasonable' direction. OR direct all employees to get vaccinated before returning to office.

If an employee refuses to take the test, an employer may consider taking disciplinary action for refusing to obey a lawful and reasonable direction. However, whether disciplinary actions are justified is highly fact-sensitive and would depend on whether a test would be highly necessary in the circumstances, considering factors such as the nature of the employee's duties, the work environment concerned, and how the employee's refusal would affect the health and safety of the other co-workers and clients of the employer.

If at all the employees are willing to take the COVID-19 tests and if they provide the testing results to the employer, the employer should ensure that they comply with the Personal Data protection (Privacy Laws) as the testing results would constitute personal data.

Considering these legal aspects, necessity really has become the mother of invention. Even those offices which have reopened have been doing so on reduced numbers, with many employees performing effectively using a mixture of both home and office working (the hybrid system).

### **Do employees have a right to work from home?**

The Next challenge is to legally assess whether the Employees do have a legal right to work from home under the Labour Law codes as these aspects have not been addressed as yet.

However, in response to the COVID-19 pandemic, the government-imposed restrictions on movement, caps on workplace capacity and health and safety obligations, which effectively forced employers to implement and encourage remote working where possible, though legally not covered.

Remote Working Resolution in all offices in India, set out guidelines to regulate remote working. In particular, offices implement a remote working system for all workers whose jobs did not require their physical presence at the main

workplace (excluding essential staff) and to give priority for remote working to employees from defined vulnerable groups. This included employees who were:

- A. pregnant;
- B. mothers to small children in school;
- C. over 55 years old;
- D. a person of determination (that is, those with a disability); or suffering from respiratory or chronic illness.

Along with the Temporary Guide attached to the Remote Working Directive the employers also needed to provide the necessary tools to the employees for remote working.

The Remote Working Directive/Temporary Guidelines for WFH of any organization did not give employees a freestanding or a blanket approval or right to work from home - they are still required to obtain approval from their employer to WFH and must still report to the main workplace when requested.

#### **What if my employees refuse to work in the office?**

At the height of the pandemic, restrictions were imposed on the percentage of the workforce that could physically attend the workplace and more, so it was only for manufacturing units and predominantly all other segments and offices were advised to work from home (WFH)

Those restrictions have now been lifted in most of the districts & cities and the majority of businesses can now operate at full capacity, under the circumstances, what happens if an employee refuses to return to the workplace?

Broadly, employees are required to attend work if requested to do so by their employer, unless they have a lawful reason for not attending. An unreasonable refusal to return to work could be grounds for disciplinary action and, potentially, dismissal, all employees have a statutory duty to comply with their employer's reasonable and lawful instructions, which could include an instruction to return to the workplace; onshore employees risk summary dismissal or disciplinary action if they are absent from work without valid reason.

Accordingly, the issue is essentially two-fold: (1) has the employer given a reasonable and lawful instruction to return to work; and (2) has the employee unreasonably/unlawfully refused to do so? This analysis is inevitably subjective and there is no one-size-fits-all approach.

In assessing whether the employer's instruction to return is reasonable, a key consideration will be the extent to which the employer has complied with its general obligations to ensure employees' health and safety at work and all government-issued guidance/requirements in order to operate a suitable and safe workplace (such as providing masks, implementing temperature checks, physical distancing, and regular sanitization). In addition, a prudent employer will have ensured that it has communicated to its employees the health and safety measures that have been implemented and given them reasonable notice of the date by which they are expected to have returned to work.

If all the required steps have been taken, but an employee still refuses to return to working in the office, the employer will be subjected to disciplinary action.

Having carefully complied with any health and safety obligations and precautions and taken any reasonable and proportionate steps to accommodate/alleviate employee concerns, an instruction to return to the workplace is likely to

be a reasonable one and any action taken by the employer in response to a continued refusal such as disciplinary actions, including dismissal should be justified.

**What if the employee’s home environment isn’t suitable to work in?**

If an employee insists on WFH and their working environment isn’t suitable, it may be reasonable for an employer to refuse their request; however, this is likely to depend on the extent to which employers can assist/have assisted with providing a suitable environment (e.g. by the provision of equipment/tools) and the reasons for the employee’s refusal to come into the office. If the refusal continues, employers may want to consider alternatives i.e. paid/unpaid leave and potentially redundancies.

**The Future is Uncertain**

For now, we all are somewhat seemed to be weathering the COVID 19 storm. Some businesses are benefiting from it. The question is, will that last? The industry, in general, may experience a drop in revenue due to unemployment and lack of funds. The number of people losing their jobs in the travel and tourism industries will likely have a knock-on effect, and the reliance on government aid is frightening. If people are not making money, they are unlikely to be spending in other sectors. How long will this drag on is anyone’s guess.



## GST Update



**Gella Praveen Kumar**  
 B.Sc., MBA, FCA, Grad CMA  
 Practising Chartered Accountant  
 Gella & Co. Bangalore  
 gellapraveen@gmail.com

**1. NN. 32/2021 dtd 29.08.2021**

Ref to Rule	Heading	Gist of Amendment
Rule 26(1)	Validation of Returns	Method filing GSTR1/3B through EVC instead of DSC has been extended till 31.10.2021
Rule 138E	Blocking of EWB	No action for blocking generation of EWB shall be exercised if default in filing of GSTR1/3B or CMP08 for the period Mar’21 to May’21 which falls due between 01.05.2021 to 18.08.2021

2. NN. 33/2021 dtd 29.08.2021 Waiving of late fee - Amnesty Scheme

Heading	Gist of Amendment
9th proviso to NN. 76/2018 dtd 31.12.2018	Default in filing GSTR3B for the period July 2017 to April 2021, can be filed between the period 01.06.2021 to 30.11.2021 with a cap on late fees of Rs.500 per return under CGST
10th proviso to NN. 76/2018 dtd 31.12.2018	Default in filing GSTR3B for the period July 2017 to April 2021 where Tax payable as per Return is "NIL", can be filed between the period 01.06.2021 to 30.11.2021 with a cap on late fees of Rs.250 per return under CGST

3. NN. 34/2021 dtd 29.08.2021

Revocation of cancellation of registration

(Ref: Section 30(1) of CGST Act, 2017)

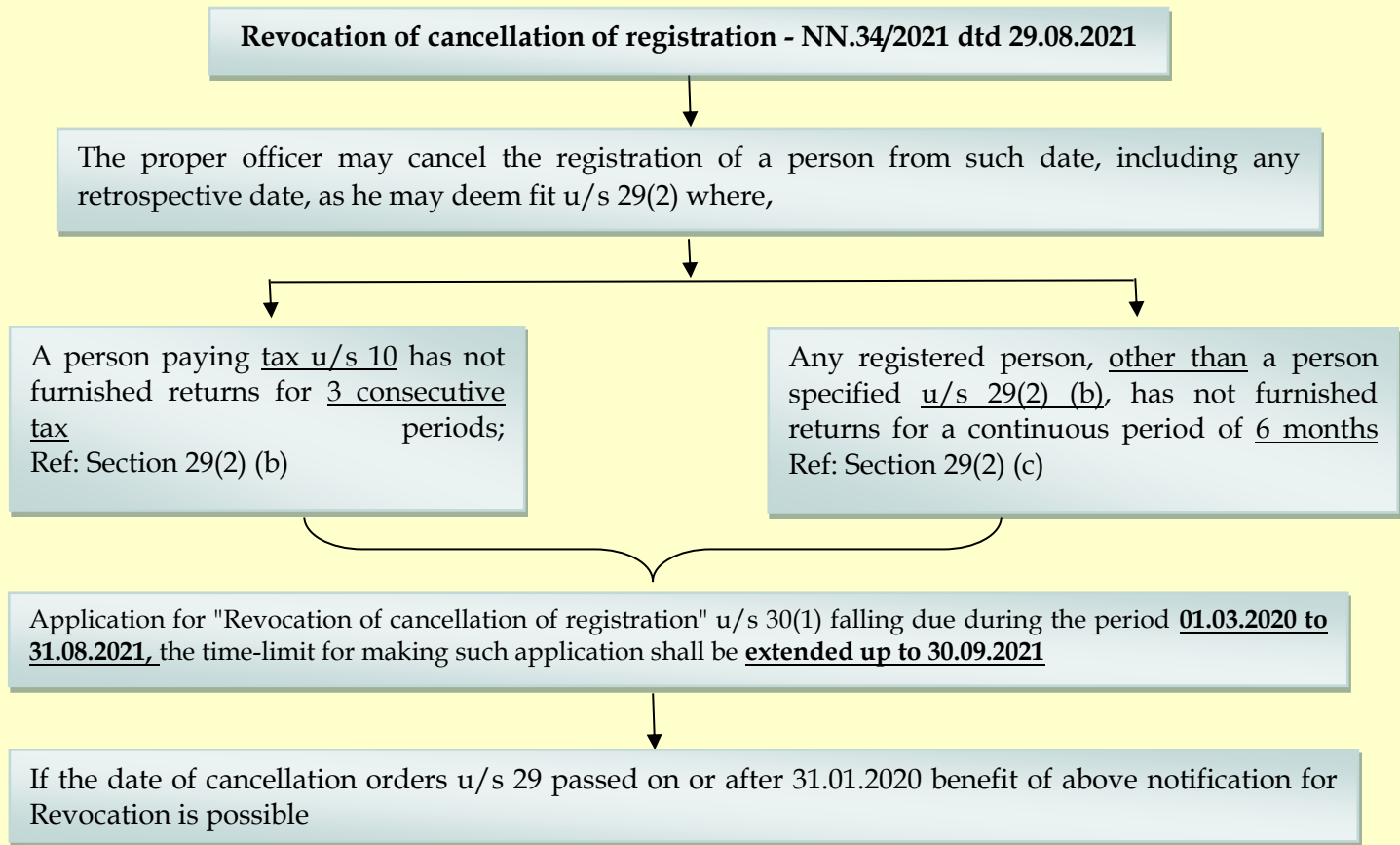
Time limit for revocation of cancellation of the registration u/s 30(1)

Section Reference	Time Limit	Authority concerned
30(1)	30 days from the date of service of the cancellation order.	Proper officer on his own motion
30(1)(a)	TL as per 30(1)+30 days	Additional Commissioner or the Joint Commissioner
30(1)(b)	TL as per 30(1)(a)+30 days	Commissioner

Example:1

Scenario	Time Limit for Revocation
Cancellation Order served as on	15-Jan-19
Time Limit u/s 30(1) - with the Proper officer	14-Feb-19
Time Limit u/s 30(1)(a) - with the Additional Commissioner or the Joint Commissioner	16-Mar-19
Time Limit u/s 30(1)(b) - with the commissioner	15-Apr-19

**Note:** Beyond 15th April 2019, Registered Person has recourse by filing an Appeal under Section 107 of CGST Act, 2017



**Example: 2**

Cancellation Order No	Effective date of Cancellation u/s 29	Reason for Cancellation	Possibility to apply for revocation of cancellation till 30.09.2021
ZA291220107608L	30-Jan-20	Suo-moto	No
ZA361220213537P	29-Dec-20	Suo-moto	Yes
ZA271120025460F	1-Mar-20	Suo-moto	Yes
ZA071120002973H	6-Oct-19	Suo-moto	No

**Note:** Registered person can make an application for revocation of cancellation of registration till 30.09.2021 as per above NN, only when an order for cancellation served on or after 31.01.2020.



# HELP YOURSELF

## *Food for Thought*



**Aparna U**

Executive Student

Email ID: [aparnaukumar14@gmail.com](mailto:aparnaukumar14@gmail.com)

### Freakonomics

- By Steven D. Levitt and Stephen J. Dubner

We were all once curious about everything around us but it is almost impossible to remember when and why we stopped or are moving away from being that way. Unlike our younger selves, we assume things too often and question very rarely. Our inquisitiveness has faded away in the maze of growing up. Let me give you a glimpse of a book that'll show you the power, beauty and importance of asking questions in this complex world that we live in.

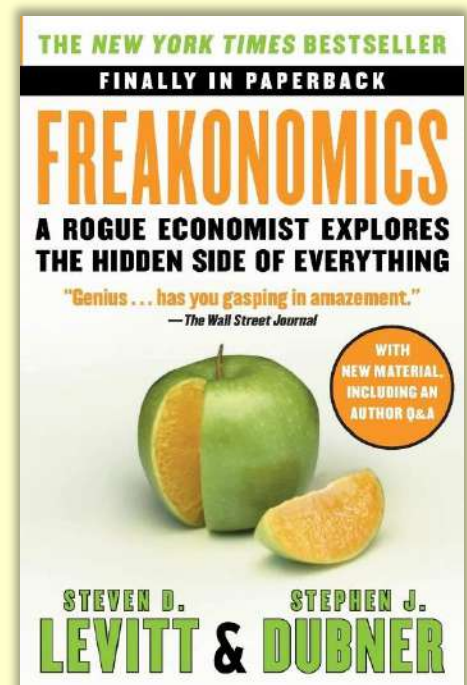
Freakonomics talks about the hidden side of everything. The questions raised and discussed in this book are not typical, and the answers and revelations are eye-opening and even eye-popping!

I'm one of those who has never found economics boring but I've often come across many of them who don't find it very interesting. If you're under the latter category, then, this is a sign for you to pick up this book right away. If you're in the former category, chances are you may have already read or heard about this book. If not, you don't want to miss it! In the words of Wallstreet Journal- this book will have you "gasping in amazement."

This bestselling book does not have a theme! The authors discuss a wide range of topics such as sports, crime, pop-culture and many more. Interestingly, Dubner highlights how Levitt says that he does not know much about the field of economics, about math or econometrics, or whether the stock market would go up or down or whether the economy is going to grow or shrink. But Levitt's interest in the everyday riddles of life, in human behavior made him investigate with a perception and curiosity like that of nobody else.

The takeaways from this book are immense. The book highlights the power of data, statistics and numbers and is full of fascinating revelations. It can truly enhance our understanding of almost everything and the way we see the world.

As articles under this column aim to give you only a gist of the book and not the summary. I usually bring a few ideas from one book in each write up but this time I'd only leave you with questions not only because it is very extensive to explain but also not to spoil your fun of reading the book by yourself- How did legalized abortion help in reduction of crimes in the United States? Is sumo wrestling corrupt? What does it take for someone to cheat? Do real-estate agents have their clients' best interests at heart? Grab the book and kindle your understanding and intellect with some wonderful questions and revelations, ultimately giving some healthy food for your thoughts.







# Regulatory Updates



Compiled by:

**Mathruka B M**

Professional Student  
Mysore

## Companies Act, 2013

### Updates on Notifications

MCA has amended the Companies (Creation and Maintenance of databank of Independent Directors) Rules, 2019, which shall be known as Companies (Creation and Maintenance of databank of Independent Directors) Second Amendment Rules, 2021.

In the principal rule, after rule 5, the following rule shall be inserted, namely;

**“6. Annual report on the capacity building of independent directors:** - The institute shall within sixty days from the end of every financial year send an annual report to every individual whose name is included in the data bank and also to every company in which such individual is appointed as an independent director in format provided in the Schedule to these Rules.

The format for such Annual report on the capacity building of independent directors is also provided by the MCA.

### G.S.R. 580(E)

MCA has amended the Companies (Appointment and Qualification of Directors) Rules, 2014, which shall be known as Companies (Appointment and Qualification of Directors) Amendment Rules, 2021.

In rule 6, in sub-rule (4) of the principal rule;

The following clause shall substitute the clause (B) of First proviso;

“(B) in the pay scale of Director or equivalent or above in any Ministry or Department, of the Central Government or any State Government, and having experience in handling, –

- (i) the matters relating to commerce, corporate affairs, finance, industry or public enterprises; or
- (ii) the affairs related to Government companies or statutory corporations set up under an Act of Parliament or any State Act and carrying on commercial activities.”.

The following proviso shall be inserted after the second proviso;

“Provided also that the following individuals, who are or have been, for at least ten years:–

- (A) an advocate of a court; or
- (B) in practice as a chartered accountant; or
- (C) in practice as a cost accountant; or
- (D) in practice as a company secretary,

Shall not be required to pass the online proficiency self-assessment test.”



## Delhi Diaries



**Vikram Hegde**, Advocate  
Advocate on Record  
Supreme court of India  
Co- Founder, VH Law Chambers  
vikramhegde87@gmail.com

# Hytone Merchants Pvt. Ltd. v. Satabadi Investment Consultants Pvt. Ltd. - A mysterious plot partly unraveled

Of late there have been many lamentations that the Insolvency and Bankruptcy Code, 2016 is not leading to a full recovery of the outstanding debts of the companies which are going bankrupt and undergoing the Corporate Insolvency Resolution Process under the code. These lamentations have also been accompanied by insinuations or even open allegations that the Code is being misused or is being gamed by persons who seek to abuse this process of law for their own benefit.

Though the chairperson of the Insolvency and Bankruptcy Board of India has defended this state of affairs by contending that the Insolvency and Bankruptcy Code is not a mechanism for recovery, the pressure that has been building on the system to eliminate any possibility for misuse of the legal process is unmissable.

The recent judgment of the National Company Law Appellate Tribunal in Hytone Merchants Pvt. Ltd. v. Satabadi Investment Consultants Pvt. Ltd which confirmed an order of the National Company Law Tribunal, Kolkata bench is a step in the direction of preventing misuse of the Insolvency and Bankruptcy Code by putting an end to what the Tribunal termed as a collusive insolvency process.

Considering the peculiar outcome of this insolvency petition we may benefit from briefly advertent to the facts of the matter. The applicant in the matter had lent a sum of rupees three lakhs to the respondent corporate debtor. The debt was admitted by the Corporate Debtor, and the default of the debt was also a matter of record. The appellant, being a financial creditor, filed an application under Section 7 of the Code seeking the initiation of Corporate Insolvency Resolution Process against the respondent corporate debtor. Upon considering the application under Section 7, the adjudicating authority, i.e., the National Company Law Tribunal, observed that the corporate debtor has given a corporate guarantee of nearly 500 crores and that the net worth of the corporate debtor is a little over 15 crores. The adjudicating authority then held that it is hard to believe that a company having a net worth of 15 crores is not able to make a payment of rupees three lakhs. On the said basis the adjudicating authority held that the petition under Section 7 filed by the appellant had been filed in collusion with the Corporate Debtor.

The mandate and scheme of Section 7 of the code is fairly straightforward. Section 7(4) provides that the adjudicating authority shall ascertain the existence of a default from the records of an information utility or on the basis of other

evidence furnished by the financial creditor. Section 7(5) provides that where the adjudicating authority is satisfied that a default has occurred and that the application under Section 7 is complete, it may admit such application. Thus the scope of inquiry of the adjudicating authority under section 7 of the IBC is limited. In *Innoventive Industries Ltd. v. ICICI Bank* the Hon'ble Supreme Court has held that the moment the adjudicating authority is satisfied that a default has occurred the application must be admitted unless it is incomplete.

On the other hand, the adjudicating authority is saddled with the responsibility under section 65 of the insolvency and Bankruptcy Code to ensure that the corporate insolvency resolution process is not misused by any person for ends other than the resolution of the insolvency. To this end it is empowered to lift the corporate veil as may be required, not only after the initiation of the CIRP but even before.

In the present case there was no allegation by any party that the financial creditor in question was in any manner related to the corporate debtor or that the financial creditor was acting at the behest of the corporate debtor. At the same time the pleadings and arguments advanced on behalf of the corporate debtor do not appear to make any serious defense against the contentions and allegations made by the financial creditor. The strange circumstances of the corporate debtor having advanced corporate guarantee to the tune of nearly 500 crores, while having a net worth of only 15,00,00,000 and also then defaulting on a supposed loan of only 3 Lakh rupees is very suspicious.

However neither the adjudicating authority nor the NCLAT delved into the details of why the financial creditor may be a related party or connected in any other way with the corporate debtor and on the basis of the suspicion alone, refused to admit the petition filed by the financial creditor under section 7 of the code.

While at the outset it may appear as if this is a laudable step in preventing misuse of the Insolvency and Bankruptcy Code, the reasoning in the judgment as to why this case would fall under the ambit of misuse or the reasoning for lifting of the corporate veil has not been explained in enough detail for this to constitute a meaningful precedent.

Further, the absence of any detailed reasoning may expose this decision to a challenge before the Supreme Court should the parties so choose. The dismissal of a petition under Section 7 merely on the basis of circumstances, though they are no doubt suspicious, if upheld as a principle, will leave a lot to the discretion of the adjudicating authority and does not provide any certainty or guidance to financial creditors or corporate debtors who may be considering the future course of action.

In the event there was a collusive action as alleged, the motive for such collusive initiation of CIRP under the Insolvency and Bankruptcy Code is unclear. The corporate debtor always had the option under section 10 of the insolvency and Bankruptcy Code of voluntarily initiating a CIRP of itself. The corporate debtor in its arguments, stated that it had suffered in business and that its investments into two other companies which were under liquidation were sunk costs and they were carried forward on its account books only as a result of accounting principles and not as a real reflection of the value of the said investments. Even the books of account which were dated 31st of March 2019 were stated to be outdated and the corporate debtor stated that a lot had transpired in the seven or eight months between the finalization of the books of account and the filing of the petition under Section 7 of the insolvency and Bankruptcy Code.

As a result while we are seeing a new development in the law of insolvency and bankruptcy, the questions that arise from this outnumber the answers.

# Tech Corner

## Technology & Studies



**Komal Kumar M**  
Executive Student  
Komalkumarm677@gmail.com

### How will technology change our lives in twenty years?

“Our future of success is directly proportional to our ability to understand, adopt and integrate new technology into our work” - Sukant Ratnakar

Before going to future let's see our past.

How many of you remember going to banks for depositing money, or withdraw money by filling in the withdrawal slips. Now where are we standing in the banking system..?

The quick adoption of the technology helped in ease of doing business, increased our productivity by reducing the time. If we go back around 5-6 years, the work might be same, but the way we are working changed phenomenally. From paper to paperless, from Physical Meetings to Online meetings and



webinars, From standing in line for paying taxes to completely paperless GST website everything changed, even from signing on the paper to using the digital signatures, We have to adopt to these technologies.

Due to the technological advancement a single mobile replaced the roles of a telephone, a alarm, a calendar, a watch, a camera, a video recorder, a music player, a DVD player, Maps, contacts book, note pad, calculator, and brought an entire store and banking system into our pocket.

But we all know few people stay away from these changes may be because of lack of knowledge or the fear of being spammed or hacked. Let us all agree before adopting to these changes we also thought about the same but as the time passed we all eventually adopted to these changes willingly or not.

We can notice that we all adopted to the digital era. If we anticipate the same kind of changes in the near future there will be no cash, no fuel stations, no papers, generation of power will be more efficient and effective, charging last for days, new ways of production of fresh vegetables, clean drinkable water, more effective recycle of waste just to name a few, All these can happen if we adopt to the upcoming technology and keep on equipping our self with more skills and knowledge.

As Heraclitus said “change is the only constant thing in life” Let's hope for the best and let's be ready for the change with a bit of cautiousness.





**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)



**Vision**  
"To be a global leader in promoting  
good corporate governance"

**Motto**  
सत्यं वर। धर्मं चर। सृष्टको तेन त्पारिः कोवेरं भुजि तेन क्वा

**Mission**  
"To develop high calibre professionals  
facilitating good corporate governance"

## ICSI NATIONAL AWARDS FOR EXCELLENCE IN CORPORATE GOVERNANCE, 2021

**21<sup>st</sup> ICSI  
NATIONAL AWARDS FOR EXCELLENCE  
IN CORPORATE GOVERNANCE**



e-form INC 22A  
(ACTIVE) compliant  
companies

**6<sup>th</sup> ICSI  
CSR EXCELLENCE AWARDS**



Companies with  
prescribed CSR  
spending of Rs. 1  
crore and above

**3<sup>rd</sup> ICSI  
BEST SECRETARIAL AUDIT REPORT AWARD**



- All Secretarial Audit reports related to Financial Year 2021 are eligible.
- 5 Secretarial Audit Reports can be nominated for Audits conducted under section 204 of Companies Act, 2013 and SEBI (LODR) Regulations, 2015.

**1<sup>st</sup> ICSI  
BEST PCS FIRM AWARD**



Proprietary Firm/  
Partnership Firm/  
LLP Registered  
with the ICSI

### ELIGIBILITY

### AWARD CATEGORIES

#### LISTED AND UNLISTED SEGMENT

Category	Turnover
Large	≥ 10000 Crore
Medium	< Rs. 10000 Crore and > Rs. 1000 Crore
Emerging	≤ Rs. 1000 Crore

One award each to Best Corporate  
in the following categories

Category	CSR Spending
Large	≥ Rs. 25 Crores
Medium	< Rs. 25 Crores and > Rs. 10 Crores
Emerging	≤ Rs. 10 Crores and ≥ Rs. 1 Crore

- One award to the Best Secretarial Audit Report.

- One award to the Best PCS Firm.

**GOVERNANCE  
PROFESSIONAL  
OF THE YEAR,  
2021**

Acknowledging CS of  
Award winning  
companies  
in all the above  
categories

For further details, visit <https://www.icsi.edu/icsiexcellenceawards/>

Connect with ICSI | [www.icsi.edu](http://www.icsi.edu) | | Online helpdesk : <http://support.icsi.edu>

Last Date  
for  
Submission:  
6<sup>th</sup> October,  
2021





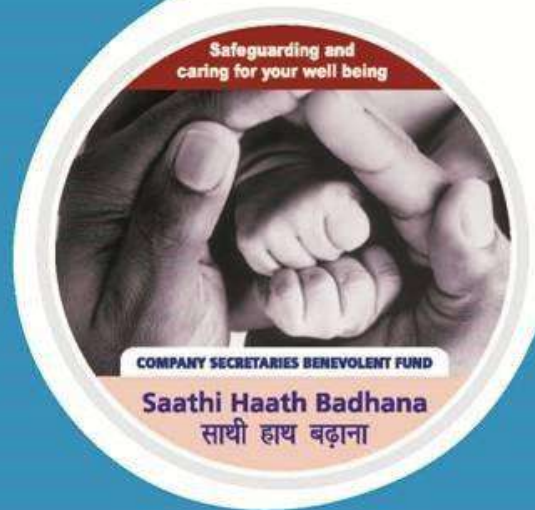
**THE INSTITUTE OF  
Company Secretaries of India**

**भारतीय कम्पनी सचिव संस्थान**

IN PURSUIT OF PROFESSIONAL EXCELLENCE  
Statutory body under an Act of Parliament  
(Under the jurisdiction of Ministry of Corporate Affairs)

**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

The subscription amount is being increased from ₹ 10,000 to ₹ 12,500 soon

### 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/- (to be changed soon) through Institute's web portal ([www.icsi.edu](http://www.icsi.edu)) along with Form 'A' available at link <https://www.icsi.edu/csbf/home> duly filled and signed.

*Decide Now! Decide Wise!*

Connect with ICSI

[www.icsi.edu](http://www.icsi.edu) | | Online Helpdesk : <http://support.icsi.edu>