



SIRC MYSURU CHAPTER

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Vision

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

Motto

सत्यं वद। धर्मं चर। *Speak the truth. Abide by the law.*

Mission

"To develop high calibre professionals facilitating good corporate governance"

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Inside this Issue

COLUMNS

03 From Chairman's Desk

05 Chapter Activities

21 Food for Thought

23 Regulatory Updates

26 Word Search

ARTICLES

07 Corporate Governance – Wisdom from Dharma

11 ESG Levered Governance: A Key Success Factor in Driving Sustainable Growth

13 Synopsis of Foreign Contribution Regulation Act (FCRA)

17 Matching Concept of ITC under GST



CS A HARSHA
CHAIRPERSON
MYSURU CHAPTER

Dear Professional Colleague

Incredible Dusshera!!! Celebrations in Mysuru going to the highest possible way. This time it was very special as it was celebrated in such a grand way after 2 years. The whole city just lit like Paradise. Even our Chapter premises was decorated with lighting on the occasion of 54th Foundation Day celebration. Happy and proud to be a part of it. Hope you all had a wonderful Ayudha puja and Dusshera celebrations. My best wishes to all the members and the students of CS fraternity. May you all excel in your journey and may all your dreams come true.

It's almost been 10 months since I have been elected as the Chairperson of ICSI Mysuru Chapter. So, with all your support and encouragement I have been able to enjoy this journey and the glimpse of which will always stay in my memories. Hope to give my best for the rest too.

September is the month of Teachers. So, we had a teachers' conference celebration on the topic- "Empowering Educators" with the University of Mysore. The event was a grand success. Professors' and faculties of the University and various other Colleges participated in the event and shared their positive feedback.

With regard to our future programme, we will be having a students' event in this month. I wish you all an Advance Happy Diwali.

"May your life be filled with colourful blessings of Health, Wealth, Knowledge and Prosperity."



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)

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Chapter Activities

One Day Orientation Program

S No	Date	Topic	Speaker	No of Participants
1	17.09.22	One Day Orientation Program for Executive Students	CS Harsha A CS Vijaya Rao N. Dhanabal	16

Career Awareness Program

Chapter organized One Career Awareness Program during the month. The detail are as follows.



SI No	Date	College Name	Resource Person	No. of Students
1	26.09.2022	Parivarthana PU College, Srirangapatna	N. Dhanabal	60

Half Day Programme for Students

On 08th September 2022 Chapter organized a half day program for the students at the Chapter Premises. The first session was handled by CS Vageesh Hegde on the topic "Approach on Indirect Tax". The second session was on the topic "Public Speaking Skills" handled by CS Harsha A., Chairperson. Around 40 students from Mysuru Chapter & Maharani Commerce & Management College for Women were participated in the event



Teachers Conference for UG/PG

Chapter organized Teachers Conference on the theme “Empowering Educators” at University of Mysore, Mysuru on 29th September, 2022. Around 50 faculties from the stream of Commerce, Management & Law of various colleges in and around Mysuru participated in the event. CS Harsha A, Chairperson of Mysuru Chapter welcomed the gathering. Dr. M L Ashoka, Chairman, DoS in Commerce, University of Mysore proposed the vote of thanks. CS Veerash M J, Member of Mysuru Chapter & Dr. N Nagaraja, Professor, DoS in Commerce were also addressed the participants.

The first session was on the topic “Indian Taxation in Present Scenario” handled by CA Gowrish Kumar Kateel, Practicing Chartered Accountant, Bengaluru. The second session was on the topic “Career as a Company Secretary” addressed by CS Harsha A, Chairperson of Mysuru Chapter.

The final session was on the topic “Stress Management” handled by Ms. Kavitha M Prakash, Corporate Trainer, Mysuru. Participation Certificates has been distributed to the participants. The participants informed that the program was very useful and got more ideas on the given topics.



Corporate Governance – Wisdom from Dharma

Introduction:

There is a saying, “small drops make a big ocean” since ancient days. This was mainly used by the farmers who were very conscious about the rain. They used to be carefully working towards the preservation of the rainwater so that the needs are met. Post Industrial revolution in Europe, the concept of bulk production came into being. The inventions and discoveries were galore, and the quantity and quality of the goods manufactured proved to be having far reaching effect on global economies. The related issues became more complicated in areas of commerce and finance. During the initial stages, the rich alone could afford to create new age business & industry and the poor continued to be poor with the shift in their respective owners. At this juncture the new commercial idea of corporate form of business surfaced.

An insight into the corporate governance today and the developments

The Corporate form of business management has got more than 300 years’ history. It all commenced in the United Kingdom along with the industrial revolution where mass production was the key factor. While the business community was very new with such evolutions and large sums of capital were required to establish such business entities. There were only proprietary and partnership forms of businesses in existence but the scope for raising capital was very limited. Then the limited liability company form of business got invented. This form could pool large capital in small lots with an assurance that in the event of failure the investor’s liability was limited to the share capital subscribed by him. So the business risk was well within the reach of ordinary people who could really think of investments.

The journey had come a very long way and currently majority of the business entrepreneurs prefer to have the corporate form of business over the others.

In India, there were more amendments brought into the Company Law by the Companies Act 2013 which need the Companies to be more responsible citizens of the societies. Now, Companies have to be transparent in their operational presentations to the society at large and their social responsibilities are well defined.

“

-We in India, have over ages achieved the boon of “ETHICS” which was passed down through generations running back to thousands of years. The essence of ethics is based on the concept of “DHARMA”. Hence ethics in its ancient crux can also be referred to as “DHARMA”. The word Dharma has often been translated as ethics morality, righteousness and goodness which clearly depict the parallelism between the two words..”

CS Pradeep Kumar Panda

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In 2016, the Insolvency and Bankruptcy Code (IBC) was introduced. This is the most talked active law in force today and has been creating good disciplinary working results in the corporate system.

The Non-performing asset (NPA) levels of the financial institutions went splitting the roofs and the recovery mechanisms that have been in existence have not yielded the desired results. With the induction of IBC, there are resolutions happening around. Of course, as any new system would have the initial teething problems, this law also is finding its own peculiar issues; at the same time this is quite common in any evolving legal system and hopefully by passage of another couple of years, IBC would find itself a welcome exit management system for struggling corporate entities with very little pain to the stakeholders.

The Emergence of the Three Mega Institutions

Institutes	Motto	Taken from	Meaning
The Institute of Chartered Accountants of India	Ye Esa Suptesu Jagati	Katopanishad	The one who is awake when others are sleeping
The Institute of Company Secretaries of India	Satyam Vada, Dharmam Chara	Tattriyopanishad	Speak the truth, follow the dharma
The Institute of Cost Accountants of India	Tamaso ma Jyotirgamaya	Brahadaranyaka Upanishad	Enlighten in darkness

All the above three institutions have adopted their mottos from the UPANISHADS which are considered to be the gist of the Vedic principles that almost present the essence of ethics and governance in one form or the other. The Upanishads are many in number and they are omnipresent. We may not be in a position to fix the age to them as they are ever green and are capable of adoption in any age and dimensions of the human history.

The institutions, over the period have been supporting the corporate system in their respective domain areas. We can therefore call them the three pillars that support corporate governance and Structure. And the basic moral principle that binds these three mega institutes is “ETHICS”.

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In order to achieve excellence, the companies should have basic positive values and attitudes. Dharma encompasses the ideas of duty, rights and all the behavioural characteristics considered appropriate, correct or morally upright in the corporate world. Ethics relatively deals with what is wrong and what is right in various disciplines of the organisation. Both these concepts together inducted into reality ensure the efficient and diligent management within various sectors in the corporate system.

The Institute of Company Secretaries of India:

The youngest one of the three Institutions and the one that focuses on corporate governance. This institution deals in the corporate form of managing and administering businesses, leading from the front in terms of emergence and guidance. Its motto was adopted by the Institute from the “TAITRIYOPANISHAD”. In this Upanishad numerous living principles appear in the form of guidelines to the student from the teacher. As the student is getting ready to leave the school after the completion of his education and training, one of the very important guidelines given to him is “SATYAM VADHA DHARMAM CHARA”. The student is well trained in the theoretical aspects of life, profession and also about the long term vision, he is expected to possess. He has understood that life ahead would be throwing lots of challenges where he may be threatened to compromise his principles and dilute the essence of his fundamentals in order to move forward in life.

The need for a separate Institution for addressing the corporate world was felt by the Government and the business world. The Institute of Company Secretaries of India was thus born. Initially the company secretaries looked after the fundamental requirements of the corporates like formation, maintenance of records, filing of returns, conducting the Board meetings, General Meetings etc.

After the crisis of 1991, the need of professionals in the areas of foreign exchange, external commercial borrowings and the foreign direct investments grew rapidly and the Company Secretary who had the skills of these areas also were consulted by the corporate houses.

In the new role, people with legal knowledge coupled with the business orientation were the most sought after professionals and the company secretaries fit the bill perfectly. The Institute also realized the potential and rose to the occasion with change of syllabus by introducing the latest commercial subjects and strengthened the members. Rapidly, the role of the company secretaries shifted from that of a “Form filers” to Corporate Administrators and or to a Conscious Keeper.

Regulatory Bodies of the Corporate World

The corporate system has become the most chosen form of doing business today. As already mentioned above in this article, the corporate form of business possesses many advantages for a growth oriented entrepreneurial group. But in many small and medium businesses, they are mostly proprietor driven, even when in the form of a corporate structure. This is because of fundamental issues within the structure and as investor awareness improves these flaws become rectified.

The Ministry of Corporate Affairs is an Indian government ministry primarily concerned with administration of the Companies Act 2013 and other relevant acts responsible mainly for the regulation of Indian enterprises in the industrial and services sector. The Acts and regulations encouraged promoters who were willing to abide by the laws and associated rules and practice corporate governance in an earnest way for the success of the organization. The company management understood and realized that unless there are effective regulatory bodies that guided them in the right way, doing business would be troublesome causing anchors in their corporate voyages. This is where the MCA emerged as a saviour.

In India, apart from the Ministry of corporate Affairs which is the apex body for the Corporates, for those companies who wish to have the participation of public at large in their equity shareholding, the Securities and Exchange Board of India (SEBI) takes care of those affairs. SEBI provides guidelines for the issue of shares and other instruments to the public by the companies that intend to offer their instruments for public participation.

The guidelines given by the regulatory bodies are extensive in nature and they have to be strictly adhered to. The Act encourages those promoters who are willing to abide by the laws and the associated rules and regulations and the practice of corporate governance in the right earnest goes a long way in the success of the organization. The company management has understood and realized that unless they are good corporate citizens, then doing business would be very difficult and also bring the breaks and anchors beneath their journeys and voyages.

Now with the advent of technology based issues emerging, the Companies Act, 2013 has introduced numerous controls and checks that would enable and protect the common man.

Further the reporting structure of the Corporate Governance norms have been expanded and have brought scores of inputs to enable the shareholder to take well informed decisions in crucial issues. The corporates are required to provide securities for their borrowings and these activities have an impact on the business, assets and the long term well-being of the organization. The Board is authorised to take decisions up to certain levels and beyond those levels, it is the owners of the company, i.e., the shareholders who call the shots. While the shareholders are located at various places and not involved in the day-to-day management of the company, the Act makes it very clear to the Board that the Board should provide all the necessary information in connection with the resolutions required to be passed at the General Meetings.

The Company Secretary holds the role of being the bearer of the responsibility in paving the way for the organization. The Act under Secretarial Audit has brought almost all the Acts and legislations that would have a major impact on the company. Therefore, the company secretary should be a thorough legal person who is well equipped to undertake such responsibility.

Corporate Social Responsibility (CSR)

In the Companies Act, 2013 Corporate Social Responsibility was included to inculcate the habit of responding to the needs of the society at large as the corporates realized the necessity and importance of society for their survival and proper functioning. Though American economist Howard Bowen is widely recognised as the father of modern CSR, CSR was an integral part from the onset of Vedic era. Vedic Philosophy emphasizes that those actions, which are coming from the core of the heart will provide long lasting results. Veda advocates for minimum accumulation, mutual co-operation and maintenance of natural harmony.

Conclusion:

The corporate form of management has travelled a long-distance covering centuries and have been imbued into the business world in such an important way that now it is unimaginable not to think of it while conducting businesses. It has become the back bone of various new age businesses and has formulated an accessible way for people to move within the corporate world efficiently. Corporate system is thus not just a part but a way of business that will continue into the future reaping benefits for the society and the country. The whole essence is that while we do business or help business to happen the whole purpose of DHARMA should not fade away.

ESG levered governance: A key success factor in driving sustainable growth

The Perspective: Sustainability has become a critical factor in the corporate world. ESG issues are increasingly seen by shareholders as a key driver for the business. Investors increasingly assess a corporation's performance on environmental, social, and governance (ESG) factors. Leading companies view ESG issues as a business imperative. They manage ESG related risks while seizing the opportunities. Many companies are facing financial and operational pressures due to the pandemic. Those companies that take a serious look and a broader view of their long-term strategy incorporating responsibility to ESG issues will be in a better position to handle these challenges create value going forward.

ESG and Board implications : Stakeholders are exerting huge pressure on the companies to take care of ESG factors and act responsibly. This casts a responsibility on the Board to become conscious and act towards making ESG count in every decision. Due to the growing consensus around ESG performance which is linked to company's value, boards must consider the following aspects for successful implementation and governance of ESG

- Understanding the ESG concept and framework
- Integrating ESG into the company's strategy
- Align risk and ESG considerations
- Assess the company's ESG maturity
- Overseeing the adoption of an ESG framework
- Assure, disclose, and communicate ESG matters

Creating an Agile Board Operating Model : The move towards ESG requires boards to rethink their core operating model and whether they have the agility to respond to a fast-changing environment. This calls for a management Information System which can provide relevant and credible data / information to the Board to embed ESG in Board decisions. This requires the Board to spend time understanding and acting upon the ESG considerations.

Board Committee on ESG: Some companies may consider to specifically delegate oversight of ESG issues to an existing board committee particularly when the focus on the ESG strategy is a relatively new area for the company. The Board may consider an option of constituting a special committee of the Board to oversee sustainability or ESG-related matters. This will facilitate ongoing and deep deliberations on relevant matters and factors within the ESG domain.

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ESG Governance is becoming a new board standard. Notwithstanding all the reasons for focusing on ESG, the board must first consider its primary fiduciary responsibility — to help govern the enterprise to attain long-term value creation”

CS Dr S K Gupta
MD, ICMAI Registered Valuer
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The Value of Third-Party Assurance: There is an imperative need for third party assurance of ESG disclosures to create trust amongst the stakeholders. This will provide necessary check on the efforts of the companies to use ESG as a marketing gimmick.

ESG Reporting: When it comes to ESG, a common thread is, getting public companies to disclose more ESG-related information in a better, more efficient and comparable way. Disclosure plays a key role in allowing investors, and the public in general, to understand and assess the risks and returns of ESG factors and their potential impact on long-term value. The important thing is to be transparent. The company must develop a communication strategy of keeping the stakeholders informed about the steps taken and the achievements in terms of imbuing ESG factors and considerations in decision making.

Conclusion : ESG Governance is becoming a new board standard. Notwithstanding all the reasons for focusing on ESG, the board must first consider its primary fiduciary responsibility – to help govern the enterprise to attain long-term value creation. ESG is a strategic consideration. The choices made now will have long term implications, which will depend upon the sustainability of the organization. In short, boards should take responsibility for ESG matters and ensure they have the right people to implement the ESG Governance and implementation structure.

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Synopsis of Foreign Contribution Regulation Act (FCRA)

Introduction:

Ministry of Home Affairs notified the changes in Foreign Contribution (Regulation) Act (FCRA) and its rules. The law sought to regulate foreign donations to individuals and organizations so that they could act in accordance with the values of a sovereign democratic republic.

Why in News:

- Amending the Foreign Contribution (Regulation) Rules, 2011, now individuals can send up to ₹10 lakh without informing the government.
- If the amount exceeds ₹10 lakh, the individuals will have three months to inform the government against 30 days earlier.
- The entities that can receive this includes political parties, legislature members, election candidates, government servants, judges, journalists, and media houses- who were all barred earlier from receiving foreign contribution.
- The time limit prescribed for intimation to Central Government for application of obtaining 'registration' or 'prior permission' under the FCRA to receive funds has been increased from 15 days to 45 days.
- Also, in a separate notification, the list of compoundable offences under FCRA was increased to 12 from 7. Compoundable offences are those where the complainant can agree to take back the charges levied against the accused.

FCRA: Purpose and Provisions:

Foreign contribution means the donation, delivery or transfer made by any foreign source of any article, currency, or security. FCRA is implemented by the Ministry of Home Affairs (MHA), supported by Intelligence Bureau in approvals and rejections through investigation on antecedents. The government orders can be challenged in the High Court.

Major Provisions (post 2020 amendment): Applicable across India, on Indian citizens outside India, all associations, groups, and NGOs, it:

- Prohibits the receipt of foreign funds by candidates for elections; journalists or newspaper and media broadcast companies; public servant, Judge, Government servants or employees, members of legislature and political parties etc. (Amended by the Foreign Contribution (Regulation) Amendment Rules, 2022).

“

-In the last few years, due to financial irregularities or other reasons, a number of NGO registrations have either been cancelled or not renewed”

CS Mehul Solanki
Senior Associates PCS LLB
Jaya Sharma & Associates
Email ID: bodha@jsa-cs.com



- Prior Permission to receive foreign funds through registration with mandatory Aadhaar submission of every office bearer of the NGOs.
- Designated FCRA Account in such branches of the State Bank of India, New Delhi to receive funds. No funds other than the foreign contribution can be received or deposited in it and it can't be transferred to any other person or NGO.
- Validity of FCRA registration is five years and NGOs are expected to apply for renewal within six months of the date of expiry of registration.
- Use of funds is limited to the purpose for which it was received with a maximum limit of 20% (earlier 50%) to meet administrative expenses.
- Compulsory filing of annual returns and in case of contraventions, government can restrict usage of unutilized foreign contribution after an inquiry.

Importance of FCRA:

FCRA aims to protect national interests so that it functions in a manner consistent with the values of a sovereign democratic republic.

- **Maintaining Economic Growth and Development:** There have been allegations that some foreign-funded NGOs deliberately protest developmental projects (mining, power projects etc.) which hurt India's growth.
- **Protection of Indian Society and Culture:** Foreign contributions are often used for socio-cultural activities which creates threat to Indian diversity and internal security. E.g., Government barred Compassion International in 2016 from funding NGOs in India over allegations of religious conversion.
- **Political Independence:** Global ideological organisations use foreign contributions to impose their own political ideology. Some NGOs also misuse it for political purposes. E.g., Ford Foundation funding was placed under the "prior approval category" in 2015.
- **Sovereignty and Friendly-foreign Relations:** FCRA helps in avoiding foreign influence over government decision-making and its relations with other countries. E.g., Foreign-funded NGOs protest against the Kudankulam Nuclear Power Plant Project (KKNPP) of India and Russia.
- **Transparency and Accountability in NGOs:** Regulations and necessary compliances under FCRA help in making NGOs transparent and accountable in their functioning by Identifying financial irregularities among foreign-funded NGOs and Ensure intended utilization of funds.

Concerns over FCRA:

In the last few years, due to financial irregularities or other reasons, a number of NGO registrations have either been cancelled or not renewed. This includes many global NGOs leading to various concerns such as:

- Targeting of NGOs due to political or ideological differences through misuse of FCRA as a tool for licensing or rejecting activities.
- Hurt NGOs Functioning due to limitations on administrative expenses and increased compliance burden.
- Violation of Right to Equality, Right to Privacy, Freedom of Association and independent functioning through limitations on bank account, mandatory Aadhaar submission of every office-bearer, prohibitions on transfer etc. E.g., No transfer of funds to other NGOs limit collaboration among NGOs.

- Against Democratic values and Ethos of India which has multiple interest groups with the vital role of NGOs to create awareness among them and protection of their rights.

Supreme Court Clears FCRA Changes;

The Supreme Court has upheld amendments in Foreign Contribution (Regulation) Act. These amendments had introduced restrictions in the handling of foreign contributions by organizations in India. It held that receiving foreign donations cannot be an absolute or vested right and can be regulated by the Parliament.

In 2020, the government had brought amendments in Foreign Contribution (Regulation) Act (FCRA), 2010. The amendment bill received Presidential assent in September 2020 & thus became an Act. It was brought with the declared objective to restrict misuse and diversion of foreign funds, and to infuse more accountability in the functioning of NGOs. The amendments were challenged as arbitrary and stringent.

The bench of Justices A M Khanwilkar, Dinesh Maheswari and C T Ravikumar said “receiving foreign donations cannot be an absolute or even a vested right”, adding, “we say so because the theory of possibility of national polity being influenced by foreign contribution is globally recognized”.

Key Highlights of the Judgement.

- **Medicine vs Intoxicant Metaphor** - Foreign Contributions serves as a medicine so long as it is utilized moderately and discreetly. However, free and uncontrolled flow of foreign contribution can act as an intoxicant impacting the sovereignty and integrity of the nation.
- **Amendments Necessary to Strengthen the Compliance Mechanism** - The verdict noted that many NGOs, which received the funds, did not utilize the foreign funds for the purposes for which they were registered. It further noted that there had been cases of successive transfers and creation of a layered trail of money. This makes it difficult to trace the flow and final utilization.
- **Increase in Inflow of Foreign Contribution** - The court noticed that the inflow of foreign contribution had almost doubled between the years 2010 and 2019. It further said that many of the registered associations had failed to comply with basic statutory formalities. This resulted in cancellation of certificates of registration of more than 19,000 organisations.
- **Read Down Section 12A of the Amended Act** - The apex court read down Section 12A which made it mandatory for all office-bearers of NGOs to provide Aadhaar number. The verdict held that producing Indian Passport for the purpose of their identification would be enough.
- **A Country can Even Completely Prohibit Acceptance of Foreign Donations** - The court said a country can even completely prohibit acceptance of foreign donations. This can be done on the ground that it undermines the constitutional morality of the nation.

Way Forward.

The Supreme Court has upheld the constitutional validity of FCRA as receiving of foreign donations cannot be an absolute right and parliament can regulate it. Also, it is a moral obligation on NGOs to follow regulations for accountability. But these regulations should always be used in the context of larger public interest while protecting individual rights through-

- An objective and fully transparent process with searchable database on NGOs.
- Use of technology for easy compliance.

- Reasonable opportunities for individuals or NGOs of being heard.
- Decentralization or Delegation of responsibilities to have participation from State/Local Government as recommended by the Second Administrative Reforms Commission (2nd ARC).

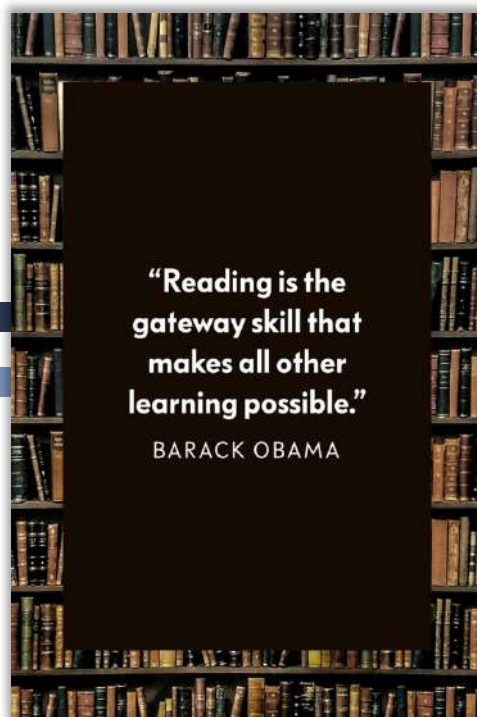
Conclusion:

The purpose of remittance discount is to stop the outflow of money and on the other hand to increase inward remittances. The increase in the remittance limit will increase the inflow of money into India which will also stabilize the foreign exchange reserves and currency. Amendments in declaration timings, changes in bank account details, etc. are being done to reduce the compliance burden.

FCRA should be liberalized with adequate safeguard. There should be multi-stakeholder regulatory bodies for NGOs such as ‘National Accreditation Council’ involving academics, bureaucrats, experts of social sector etc. Another important aspect is to rationalize laws with regard to formation of NGOs. E.g., In the United States formation of NGO is a basic right. The role of NGOs is crucial for the development of backward and vulnerable section of people.

Disclaimer:

The entire contents have been prepared based on relevant provisions and as per the information existing at the preparation time. Although care has been taken to ensure the accuracy, completeness and reliability of the information provided, we assume no responsibility. Therefore, users of this information are expected to refer to the relevant existing provisions of applicable Laws. Consequently, we take no responsibility for the consequences of the use of such information. In no event we shall be liable for any direct, indirect, special, or incidental damage resulting from, arising out of or in connection with the use of the information. This is only a knowledge-sharing initiative. Therefore, the author does not intend to solicit any business or profession.



Matching Concept of ITC under GST

One of the aftermath effects of GST is availability of entire information electronically unlike erstwhile laws, wherein eligibility & availability of Input tax credit (hereinafter referred as ITC) is restricted on the basis of Matching Principle envisaged as per Section 16 of CGST Act, 2017 (hereinafter referred as Act). A well thought approach has been embedded into GST law by way of allowing ITC in the hands of buyer only when the tax due on such supply has been duly paid by the supplier concerned excluding the details of Imports, RCM.

Reconciliation of ITC as per Books of Accounts vis-à-vis GST portal is an activity originated due to compliance requirements envisaged u/s 16 of the Act. Read with relevant conditions and restrictions. Provisions laid out under Section 16 of the Act are mere pass over of the provisions from erstwhile law. Let us examine few decisions which are a pretext to the above said provisions u/s 16

- i. Claiming input tax deduction in the return is compulsory
Ajanta Digital Lab vs Comml. Tax Officer Karnataka
Infinite Builders and Developers Vs. Comml. Tax Karnataka
- ii. ITC shall not be restricted in the hands of buyer due to default made by selling dealer
Commissioner of Trade and Taxes, Delhi & Oths vs Arise India Limited & Oths
SLP NO. 36750/2017

Proper officer (hereinafter referred as PO) under GST have started issuing Form GST ASMT10 or Form GST ADT02 for the period FY 2017-18 demanding for reversal of ITC shortage found on the basis of comparison of ITC availed as per GSTR3B vis-à-vis GSTR2A. While doing so, the PO have been making a reference to Section 16 of the Act along with Section 155.

In this article, we shall examine the legality of such allegation and authority vested by the PO for making such allegations.

1) Understanding GST provision

Section 16(2) Eligibility and conditions for taking input tax credit:

Quote:

“

-AI in finance helps in flexibility and improvement of existing systems. AI system can be constantly improved and re-modelled through continuous learning and re-learning of data patterns. AI has become an unavoidable part of the finance industry, and it is getting better with time”

CA Gella Praveen Kumar
B.Sc., MBA, FCA, Grad CMA
Faculty at ICAI for FST training
Practising Chartered Accountant
Gella & Co. Bangalore
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(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,

- a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;
- b) he has received the goods or services or both.

Explanation.-For the purposes of this clause, it shall be deemed that the registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise

- c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and
- d) he has furnished the return under section 39:

Section 41. Claim of input tax credit and provisional acceptance thereof

1. Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to take the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited on a provisional basis to his electronic credit ledger.
2. The credit referred to in sub-section (1) shall be utilised only for payment of self-assessed output tax as per the return referred to in the said sub-section

Rule 69. Matching of claim of input tax credit

The following details relating to the claim of input tax credit on inward supplies including imports, provisionally allowed under section 41, shall be matched under section 42 after the due date for furnishing the return in FORM GSTR-3-

- a. Goods and Services Tax Identification Number of the supplier;
- b. Goods and Services Tax Identification Number of the recipient;
- c. invoice or debit note number;
- d. invoice or debit note date; and
- e. tax amount:

Provided that where the time limit for furnishing FORM GSTR-1 specified under section 37 and FORM GSTR-2 specified under section 38 has been extended, the date of matching relating to claim of input tax credit shall also be extended accordingly:

Unquote:

Above GST provisions are extracted AS-IS applicable during the FY 2017-18 before the revisions happened over a period of Five years till date. GST law has laid down the mechanism along with conditions for availment ITC as per S.16(2). It is relevant to note that provisions of S.16(2)(c) with regards to availment of ITC as per the provisions of Section 41 on a Provisional basis and payment of tax through ITC or Cash has not been enacted till date.

PO concerned have been issuing the alleged Form GST ASMT 10 or Form GST ADT02 blatantly by referring to S.16(2) without understanding the actual provision envisaged prior to enactment of GST wherein a system of filing GSTR1 by the Supplier, flow of

information from such statement to GSTR2 of the buyer and on the basis of Acceptance/ Modification/ Rejection for the Inward supplies by the buyer concerned to GSTR3 for payment of Taxes u/s 49 enacted in Section 16.

Also, a reference to Section 41 – availment of Input tax credit on a Provisional basis in the Electronic credit ledger are subject to such conditions and restrictions. PO have grossly failed to quote the provisions laid out u/s 41 before making the allegation for demand of ITC reversal towards the mismatch. Section 41 read with Rule 69 were the provisions in existence for FY 2017-18 and no dispute exists with regards to the intent of the GST law for recovery mechanism in relation to mis-matched ITC as per Section 42 read with Section 43. Fact of lacuna in GSTN for not enacting data flow from GSTR1 to GSTR2 from there to GSTR3 is unaware for many of the PO concerned and demand is being raised for the mismatch in ITC through Form ASMT 10 or ADT02.

GST provisions are well drafted by the authorities concerned to overrule the settled position of law by several courts against Revenue in relation to ITC restriction. Responsibility of the Tax Officer to administer and recover taxes due from the defaulting supplier has been duly shifted to the buyer under erstwhile VAT laws were duly challenged under Article 14 and 19(1)(g) of the Constitution of India in various High Courts. Several courts have set aside the demands made by Revenue on restricting ITC to the buyer in relation to the Purchase made from the defaulting suppliers. This aspect has been overturned under GST law by introducing the provision under Section 16(2)(c) read with Section 41 and Rule 69. Though these provisions have been enacted under GST law, due to failure of GSTN, such matching concept of ITC in the hands of buyer is not in existence and the provisions of Section 41 read with connected provisions of Section 42 & 43 are amended as on today. Section 42 & 43 have been withdrawn from GST law. None of these facts were duly noted by the PO concerned who have been issuing the above Notices

2) GSTR2A has not been Notified During FY 2017-18

During FY 2017-18, Form GSTR2A has not been notified by CBIC for the purpose of Section 16 or 39 or 49 of the Act. Mere existence of GSTR2A as a mirror window for filing GSTR2 has no meaning unless GSTR2 has been enacted as per Section 38 of the Act. Form GSTR2A being referred by the PO in the above alleged Notices is enacted vide NN 79/2020 dtd:15th October 2020 in a revised version with more agile data.

During FY 2017-18, Form GSTR2A is not made available to the Registered Person for verifying the ITC on periodical basis before filing Form GSTR3B. Only during 2018-19 this form has been enabled to the Registered person. This fact is not aware by the PO and they cannot assume authority for making a demand for mismatch in ITC during FY 2017-18 on the basis of data available in GSTR2A which didn't exist during period where Form GSTR3B was filed. Accordingly, in our view demand made by the PO for the ITC mismatch by making a reference to Form GSTR2A is baseless and lacks authority for making such comparison

3) Reference to 27th GST Council Meeting dtd: 04th May 2018

Quote:

Para4: No automatic reversal of credit:

There shall not be any automatic reversal of input tax credit from buyer on non-payment of tax by the seller. In case of default in payment of tax by the seller, recovery shall be made from the seller however reversal of credit from buyer shall also be an option available with the revenue authorities to address exceptional situations like missing dealer, closure of business by supplier or supplier not having adequate assets etc.

Unquote:

During May 2018 there has been an exhaustive discussion on the envisaged mechanism of flowing data from GSTR1 to GSTR2 for enacting the ITC restriction placed u/s 16. Details of such deliberation is available in public domain and this fact has not been in dispute with the PO concerned. However, none of the PO's have examined these facts before issuing the Form ASMT10 or ADT02. Reiteration of the stand in earlier paragraph towards authority vested, non-existence of such Form during FY 2017-18 read with the recommendations made by the GST Council, PO concerned have to restrain from making the allegations towards demand of ITC on mere comparison of GSTR3B vis-à-vis GSTR2A for FY 2017-18

4) GSTR2A is not a Static Data:

Data available in GSTR2A is not a static data unlike the Form GSTR2B available as on today. PO concerned have a tendency to compare ITC availed in GSTR3B vis-à-vis Form GSTR2A for FY 2017-18. In case where supplier who have uploaded the information pertaining to FY 2017-18 during 2018-19 or subsequent period, details of such supply for FY 2017-18 shall be made available in Form GSTR2A in subsequent periods. PO's are not aware of such data updation and allegations are raised for mismatch in the ITC and demand for reversal for the difference if any. Though, CBIC has not duly notified Form GSTR2A for restriction of ITC till amendment made in Rule 36 of CGST Rules, 2017 vide NN 49/2019 dtd:09th October 2019 all the allegations being raised by the PO concerned are baseless & void in our view

5) Reference made to Section 155 for ITC Restriction

Many of the notices being issued under Section 61 vide Form GST ASMT10 have made a reference to "Section 155 – Burden of Proof" towards eligibility of ITC. Section 61 of the Act empowers a PO to scrutinize the return and related particulars furnished by the registered person to verify the correctness of the return.

It is relevant to understand that a PO shall only examine the correctness of the Return and cannot draw their view towards eligibility and availability of ITC by reference to Section 155. Only by carrying out an Audit under Section 65/66, PO shall examine the documents and records maintained by the Registered person. Any reference to 155 for the Notice issued u/s 61 by the PO is meaningless and void under Law

Conclusion:

Any allegation made by the PO for reversal of ITC for FY 2017-18 on the basis of comparison of GSTR3B vis-à-vis GSTR2A is null & void for the reasons listed as above. There could be many other factors which are relevant for examination for the mismatch not duly mentioned above. However, deficiency in filing statement of GST Outward supplies or making payment of taxes by the supplier concerned is not enacted full fledged till date under the GST law. Mere filing of GSTR1 doesn't reveal payment of taxes by the supplier concerned on the supplies effected for a tax period unless the original mechanism of invoice level mapping is made vis-à-vis payment of taxes for the differences reported thereof. Considering this fact PO should realize the actual intent of the GST law and stop making demand of discrepancies noted if any in ITC availed by the Registered person

Disclaimer:

Views expressed in this article are personal in nature of the author concerned. It is advised to examine the relevant provisions and expert advise before taking appropriate stand in this regard. You can send your views or suggestions to praveen@gella.in



Help Yourself

Food for Thought

Life's Amazing Secrets

- Gaur Gopal Das

Disclaimer: This article does not endorse any book and is not sponsored by any author or publication. Content shared here is for knowledge and learning purposes only.

" You may have come across Gaur Gopal Das in forwarded WhatsApp videos or on social media platforms. He is a monk, an excellent orator who, with his humor and wit, spreads good messages and speaks at various events across the globe. This book too, which is his very first one, is filled with valuable life lessons with a dash of humor.

Why pick up this book? You need not wait until life teaches them all to you one by one. Reading this can help you be aware of a lot of things thereby enhancing your life decisions and also your life.

If you're looking to pick up the habit of reading, then this book can be a good start. As it is written by a life coach and has life lessons in the form of a story and so, this is the best one to help you pick up and continue your reading habit. Another self-help book that is by a life coach, written in the form of a story is 'The 5AM Club' by Robin Sharma (This book is discussed in this e-magazine's January 2021 issue.) Both the authors' form of writing keeps you hooked to the story and the content helps you to reflect on your life and gradually enhance the way you look at it. You can also pick up 'Think like a Monk' is book written by Jay Shetty who was once a monk

and now imparts his learnings and experiences to various people mostly online, on social media and YouTube. This book is discussed in this e-magazine's December 2021 issue.

Half-way through the book, I felt the story is like Geethopadesha in a modern day setup. I wouldn't wish to tell you about this any further, get going to the book and you'll know!

If you are here for the first time, this column is to impart byte sized knowledge from self-help books, biographies, autobiographies and other related genres, relevant specifically to corporate professionals and aspiring professionals. Not every learning that a book enshrines can be fit in here, so writing a summary or a book review is not the aim of this column. The intent is to give you a touch of acquaintance to a new book, in every issue of this e-magazine, hoping that it will make you want to grab it and read for yourself.

Sharing just one excerpt from the book as always-

The author was speaking about meditation and was asked this question- "After all this time, have you seen any changes in your character?" to which the author answered- "I have, quite honestly. One doesn't have to wait to see the effects of meditation in the afterlife- we can see them in this life if we practice it diligently enough and under the right guidance."

That's all for this month, another book, another food for thought in the next. Help Yourself until then!

Columnist:

Aparna U
Executive Student
Email ID: aparnakumar14@gmail.com





REGULATIONS

Regulatory Updates

Companies Act, 2013

Updates on Notifications

MCA has amended Companies (Specification of Definition Details) Rules, 2014, which shall be known as Companies (Specification of definition details) Amendment Rules, 2022.

In rule 2, in sub-rule (1), for clause (t), the following clause shall be substituted,

“(t) For the purposes of sub-clause (i) and sub-clause (ii) of clause (85) of section 2 of the Act, paid up capital and turnover of the small company shall not exceed rupees four crore and rupees forty crore respectively.”

G.S.R. 700(E)

MCA has amended Companies (Corporate Social Responsibility Policy) Rules, 2014, which shall be known as Companies (Corporate Social Responsibility Policy) Amendment Rules, 2022.

In sub-rule (1) of rule 3, after the proviso, the following proviso shall be inserted:

“Provided further that a company having any amount in its Unspent Corporate Social Responsibility Account as per sub-section (6) of section 135 shall constitute a CSR Committee and comply with the provisions contained in sub-sections (2) to (6) of the said section.”

sub-rule (2) shall be omitted

In rule 4 of the principal rules, for sub-rule (1), the following sub-rule shall be substituted:

“(1) The Board shall ensure that the CSR activities are undertaken by the company itself or through, -

- a. a company established under section 8 of the Act, or a registered public trust or a registered society, exempted under sub-clauses (iv), (v), (vi) or (via) of clause (23C) of section 10 or registered under section 12A and approved under 80 G of the Income Tax Act, 1961 (43 of 1961), established by the company, either singly or along with any other company; or
- b. a company established under section 8 of the Act or a registered trust or a registered society, established by the Central Government or State Government; or
- c. any entity established under an Act of Parliament or a State legislature; or
- d. a company established under section 8 of the Act, or a registered public trust or a registered society, exempted under sub-clauses (iv), (v), (vi) or (via) of clause (23C) of section 10 or registered under section 12A and approved under 80 G of the Income Tax Act, 1961, and having an established track record of at least three years in undertaking similar activities.

G.S.R. 715(E)

SEBI Act, 1992

Updates on Circulars

Issue and listing of Commercial Paper by listed InvITs

It has been decided that, InvITs may issue listed commercial papers subject to the following:

- InvITs shall abide by the guidelines prescribed by Reserve Bank of India for issuances of commercial papers.
- InvITs shall abide by the conditions of listing norms prescribed by SEBI under SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 and circulars issued thereunder.
- The issuance of listed CPs shall be within the overall debt limit permitted under SEBI (Infrastructure Investment Trusts) Regulations, 2014

SEBI/HO/DDHS/DDHS_Div3/P/CIR/2022/ 123

Issue and listing of Commercial Paper by listed REITs

It has been decided that REITs may issue listed commercial papers subject to the following:

- REITs shall abide by the guidelines prescribed by Reserve Bank of India for issuances of commercial papers.
- REITs shall abide by the conditions of listing norms prescribed by SEBI under SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 and circulars issued thereunder.
- The issuance of listed CPs shall be within the overall debt limit permitted under SEBI (Real Estate Investment Trusts) Regulations, 2014

SEBI/HO/DDHS/DDHS_Div3/P/CIR/2022/ 122

Two-Factor Authentication for transactions in units of Mutual Funds

SEBI has introduced various measures to prevent third-Party payments and to safeguard the interest of unitholders. Two-Factor Authentication for redemption of Mutual Fund units has been implemented with effect from June 01, 2022 for transactions outside stock exchange platforms and from July 01, 2022 for transactions on stock exchange platforms.

In order to further safeguard interest of investors, it has now been decided to extend the Two-

Factor Authentication for subscription transactions in the units of Mutual Funds as well. Accordingly, Clause 4.4 of the SEBI Circular no. SEBI/HO/IMD/IMD-I DOF5/P/CIR/2021/634 dated October 4, 2021, as modified vide the SEBI Circular No. SEBI/HO/IMD/IMD-I DOF5/P/CIR/2022/29 dated March 15, 2022, stands further modified as under:

“4.4. In case of subscription and redemption of units, Two-Factor Authentication (for online transactions) and signature method (for offline transactions) shall be used for authentication. One of the Factors for such Two-Factor Authentication for non-demat transaction shall be a One-Time Password sent to the unit holder at his/her email/ phone number registered with the AMC/RTA. In case of demat transaction, process of Two-Factor authentication as laid down by the Depositories shall be followed. It is also clarified that in case of mandates/systematic transactions the requirement of Two-Factor Authentication shall be applicable only at the time of registration of mandate/systematic transactions.”

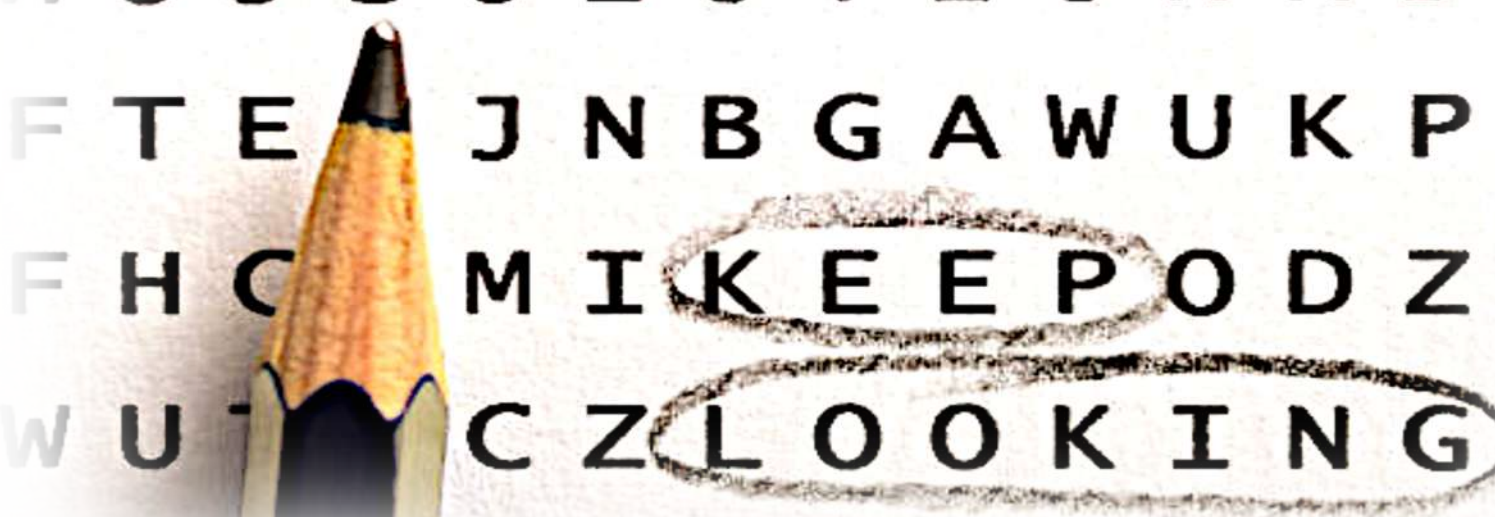
AMFI’s best practice guidelines issued for AMCs with regard to Two-Factor authentication for redemption transactions of Mutual Funds shall be revised suitably to include subscription transactions of Mutual Funds. It shall be mandatory for all AMCs to follow such guidelines.

SEBI/HO/IMD/IMD-IDOF1/P/CIR/2022/132

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Word Search

Based on Competition Act

T	W	D	O	M	I	N	A	N	T	A	J	I	S	T	C
Q	I	G	H	B	N	J	K	L	M	N	G	C	E	G	O
C	R	E	V	B	T	W	E	N	T	Y	M	Y	F	B	M
O	E	B	I	R	T	Y	U	I	O	M	B	S	F	N	M
M	T	C	V	N	B	T	N	M	Y	U	I	O	E	H	I
P	Y	W	S	D	A	F	N	D	B	G	B	R	C	J	S
E	U	Q	A	S	D	G	R	T	N	Y	Z	F	T	K	S
T	I	D	R	T	H	Y	R	I	E	Z	S	V	S	E	I
I	O	C	V	B	N	M	G	E	W	H	Q	G	X	D	O
T	P	Q	W	E	R	G	N	M	E	J	R	T	Y	U	N
I	L	G	H	J	I	E	R	Y	U	M	E	W	Z	C	G
V	K	D	F	R	W	E	R	T	Y	U	E	E	H	V	H
E	J	V	D	Z	X	C	V	B	N	M	Y	N	J	B	J
D	H	I	T	Y	U	I	O	F	G	H	J	M	T	N	V
F	B	C	A	R	T	E	L	R	T	Y	U	I	K	L	O
G	A	F	H	J	K	L	C	B	N	M	B	F	T	Y	I
D	E	A	L	V	A	L	U	E	A	F	G	J	K	M	D

Questions

Based on Based on Competition Act

S.NO	WORD SEARCH CLUES
1	An association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services (6).
2	Anti- _____(11) Agreements are prohibited under Competition Act 2002 .
3	If an enterprise or a group, directly or indirectly, imposes unfair or discriminatory condition in purchase or sale of goods or service there will be abuse of _____ position (8).
4	Any agreement, between enterprises or persons engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or manipulating the process for bidding. (3,7).
5	Under the Competition Act, the agreements in relation to goods / services which have an ‘Appreciable Adverse Effect on Competition (“AAEC”)’ in India shall be _____(4).
6	Under the Competition Amendment Bill 2022,a concept of _____(4,5) thresholds is being introduced, pursuant to which large value transactions will require prior approval of the CCI .
7	Competition _____(10) of India (CCI), is an authority responsible for the enforcement and administration of the Competition Act.
8	The Competition Act is based on the “_____doctrine” (7).
9	Under the Competition Amendment Bill 2022, it is proposed to reduce the time period within which the CCI is required to form its <i>prima facie</i> opinion on a combination to _____days (6).
10	Agreement requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods (3,2,9).

Note : Figures in the bracket indicate number of alphabets in the answer word.

Answer in Page 28

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Questions

Based on Based on Competition Act

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¹⁰ T	W	³ D	O	M	I	N	A	N	T	A	J	I	S	T	⁷ C
Q	I	G	H	B	N	J	K	L	M	N	G	C	⁸ E	G	O
² C	R	E	V	B	⁹ T	W	E	N	T	Y	M	Y	F	B	M
O	E	B	I	R	T	Y	U	I	O	M	B	S	F	N	M
M	T	C	V	N	B	T	N	M	Y	U	I	O	E	H	I
P	Y	W	S	D	A	F	N	D	B	G	B	R	C	J	S
E	U	Q	A	S	D	G	R	T	N	Y	Z	F	T	K	S
T	I	D	R	T	H	Y	R	I	E	Z	S	V	S	E	I
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V	K	D	F	R	W	E	R	T	Y	U	E	E	H	V	H
E	J	V	D	Z	X	C	V	B	N	M	Y	N	J	B	J
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F	⁴ B	¹ C	A	R	T	E	L	R	T	Y	U	I	K	L	O
G	A	F	H	J	K	L	C	B	N	M	B	F	T	Y	I
⁶ D	E	A	L	V	A	L	U	E	A	F	G	J	K	M	D



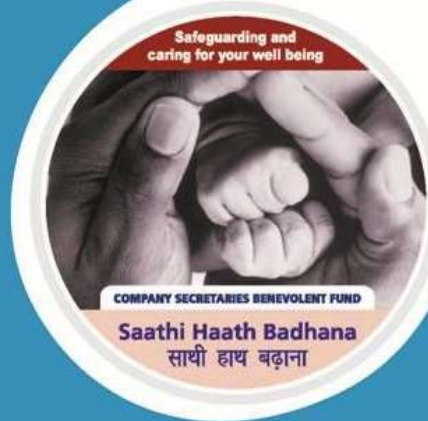
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Company Secretaries of India**

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**



Saathi Haath Badhana
साथी हाथ बढ़ाना

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1

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2

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3

To ensure that you have extra resource during serious illness or accident

4

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