



SIRC MYSURU CHAPTER

eMagazine

September, 2024
245th Edition

Vision

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

Motto

सत्यं वद। धर्मं चर। इष्टार्थं कुरु त्वयैव श्रेयं नृणां कुरु

Mission

"To develop high calibre
professionals facilitating
good corporate governance"

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From the Desk of Chairman

Dear Professional Colleagues!

I am happy to interact with you all again through this eMagazine.

My hearty congratulations to all those students who have succeeded in the recently announced June 2024 exam results and we proudly celebrate the outstanding achievement of two of our executive students who have secured all India 5th and 11th Ranks. This time 4 Students have cleared Professional Programme and 16 students cleared Executive Programme. And good luck for the students who could not clear the exams at this attempt.

The chapter has celebrated 78th Independence Day on 15th August 2024 by conducting a session on the topic "Cyber Crime and the Digital World - Challenges and Opportunities", GP Capt P Anand Naidu, Director- ISAC, Retd Indian Airforce Officer & Adjunct professor – NALSAR was the Chief Guest for the Independence Day celebration and Speaker of the session. It was an enriching interactive session the participants greatly benefited from the session, gaining valuable knowledge and insights into the challenges and opportunities presented by cybercrime and digital fraud in the modern world.

During the month of August 2024 our Chapter has conducted 12 Career Awareness Programs and successful in creating awareness about our Company Secretary course and we have addressed 2,000 PUC, Degree students in this month.

During the month of August 2024 our Chapter has conducted its 24th Batch of One Day Orientation Program on 17th August, 2024 at chapter premises, 23 students attended the Orientation programme.

The Institute is delighted to observe Teacher's Week from 5th to 11th September, 2024, recognizing the invaluable contributions of teachers in shaping our lives. In conjunction with the Institute, our Chapter is hosting a Teacher's Conference on 20th September, 2024. Invitations have been dispatched to all commerce colleges affiliated with Mysore University, and we anticipate a fruitful and engaging event.

We are planning to organize many more sessions for the members and students in the days to come.

Thanking you

Independence Day Celebrations

78th Independence Day was celebrated at the Chapter Premises on 15-08-2024. National Flag hoisting done by GP Capt P Aanand Naidu Director-ISAC, Retd. Indian Airforce Officer & Adjunct Professor-NALSAR at 9.00am in the presence of the members and students of the chapter.



Study Circle Meet

On 15-08-2024, Study Circle meet was held at chapter premises on the subject matter of "Cyber Crime and the Digital World-Challenges and opportunities" GP Capt P Aanand Naidu Director-ISAC, Retd. Indian Airforce Officer & Adjunct Professor-NALSAR was the speaker of the session. Cyber security is one of the biggest challenges the world is facing right now, only Laws cannot protect India from Cyber related threats. Speaker talked about the security aspects of Cyber-crime. He spoke on protection and awareness on personal front and then being a KMP, how careful we need to be, what are the possible threats we may face and how to take counter measures along with the huge compliance burden that's put on us by DPDPA. All in all, it was an enlightening session Chairman CS Padmanabh welcomed the gathering and CS Krishnegowda C did the vote of thanks.

Orientation Program

24th one day orientation program held at chapter premises on 17-08-2024 was led by CS C Krishna Gowda, CS Keerthana Gopal & CS Kiran Thyagaraja. 23 students participated in the program and got the guidance for the study.



Career Awareness Program

Sl. No	Date	School/University Name	Speakers/Guest	No of Persons Attended
1.	02.08.2024	Sree Cauvery PU College	CS Pracheta, PCS	145
2.	02.08.2024	Sree Cauvery Frist Grade College	CS Pracheta, PCS	120
3.	03.08.2024	GSSS Frist Grade College	CS Phani Datta, Immediate Past Chairman of the Chapter	250
4.	05.08.2024	Gopalswamy PU College	CS Krishne Gowda, Vice Chairman of the Chapter	120
5.	06.08.2024	JSS Law College	CS Abhishek Bharadwaj, Secretary of the chapter	130
6.	07.08.2024	Amritha Vishwa Vidyapetham	CS Phani Datta, Immediate Past Chairman of the Chapter	110
7.	12.08.2024	Parivarthana Business School	CS Harsha A, Former Chairperson of the chapter	60
8.	13.08.2024	Sharada Vilas College	CS Vijaya Rao, Former Chairperson of the chapter	100
9.	14.08.2024	Sri K. Puttaswamy Frist Grade College for 1 st Year B.Com	CS Krishne Gowda, Vice Chairman of the Chapter	120
10.	14.08.2024	Sri K. Puttaswamy Frist Grade College for 2 nd Year B.Com	CS Krishne Gowda, Vice Chairman of the Chapter	50
11.	23.08.2024	Mallamma Marimallappa PU College – 1 st Year	CS Shashidhar R, PCS	80
12.	23.08.2024	Mallamma Marimallappa PU College – 2 nd Year	CS Shashidhar R, PCS	75
13.	26.08.2024	MMK & SDM Mahila Maha Vidyalaya College	CS Pracheta, PCS	180
14.	27.08.2024	MMK & SDM Girls PU College	CS Pracheta, PCS	300
15.	29.08.2024	Sri K. Puttaswamy PU College	CS Krishne Gowda, Vice Chairman of the Chapter	150
16.	31.08.2024	Maharani's Women's Commerce & Management College	CS Abhishek Bharadwaj, Secretary of the chapter	400



How to Manage Difficult Audience

Managing Difficult Audience:

Managing a Difficult audience is an Art! And this art can be learnt, practice and demonstrate through the toastmaster's platform.

This project in toastmasters covers common behaviors of difficult audience members and how to address each behavior in a calm, effective and professional way.

The purpose of this project is to practice the skills needed to address different and difficult audience. Few of the requisite skills are as below:

Take Control of the Situation

While delivering the speech, speaker shall be the in charge of his / her speech. Thorough practice, research shall help on the one hand and support of Mentor during the time of practice supports speaker to deliver such speech.

When the speaker delivers such speech, It is very important to note that not to let a few people take over the floor distract the speaker from the speech. Audience / attendees with their own study, research or otherwise may dissecting speaker's statistical analysis. But the speaker shall remember that he / she is performing for the group, not for a few outspoken individuals.

Handling Differently

To stop a talkative audience member or a line of questioning that's unlikely to interest others the generally used technic is try saying something like, -That's a very interesting, would like to know more, Let us talk later in detail, thanks for your comment and in the interest of time we shall move further , or Briefly respond to the most recent part of the question Then you can ask the questioner to talk to you after the session.

Diplomacy

Throughout the speech or during question and answer, use tact, even if a questioner is out of line. It is important to know that the speaker wants people to leave feeling good about having attended the meeting.

Listen and Learn

Attempt this project with lot of listening skills which shall make the speaker to hear and understand the situation better and act according to the situation.

The above skills was demonstrated by TM Pracheta Manchali while in our 141st ICSI Mysuru Royal Pro TM Club's meeting by attempting that project of Handling Difficult Audience.

Kind Attn!! Members and Students of ICSI

Our institute looks at us to be the torchbearer of the corporates. Toastmasters is an international organization having more than 14000 clubs all over the world and its focus is for the members to improve their public speaking and communication skill along with improving leadership skills. In line with our institute's quest, Mysuru Chapter of ICSI SIRC has started "ICSI Mysuru RoyalPro TM Club" in June 2021. This is exclusively for CS members and students. As meeting happens online anyone can join the club and get the benefits. To know more about this and to join the meeting please contact club President TM Komal Kumar M at 77952-77906 or VP Membership TM CS Phani Datta D N at 98862-14182 (only through whatsapp please). We meet every Friday from 7:00 to 8:30 PM online. We would love to have you as part of our family.!



02

Articles



Company Secretaries as Stewards of ESG Principles

Ms. Priyanshi Garg

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“In India, Company Secretaries play a diverse role in preparing accurate, transparent, and compliant ESG reports that deliver crucial information to stakeholders. They serve as key intermediaries between the company and regulatory authorities, ensuring strict adherence to ESG reporting requirements.”

Company Secretaries in India are key to promoting Environmental, Social, and Governance (ESG) principles in organizations. They have various responsibilities, including reporting, ensuring ethical governance, engaging with stakeholders, and leading training and education initiatives. By fulfilling these roles, Company Secretaries help companies stay committed to sustainability, comply with regulations, maintain transparency, and practice ethical business. This discussion will delve into the essential functions that Company Secretaries perform to achieve ESG excellence.

ESG Leadership: The Impact of Company Secretaries in India

Understanding and Ensuring Regulatory Compliance:

CS in India are crucial in managing the complex Environmental, Social, and Governance (ESG) regulations. Their roles include understanding and ensuring regulatory compliance, preparing accurate and transparent ESG reports, and engaging with stakeholders. Acting as a bridge between the company and regulatory authorities, CS facilitate adherence to

ESG reporting requirements, fostering transparency and trust.

Building Governance and Sustaining Best Practices:

Corporate Secretaries (CS) play a crucial role in enhancing Board effectiveness by evaluating and recommending potential board members. They rigorously assess candidates' skills, experience, and diversity to ensure the Board is well-equipped to address Environmental, Social, and Governance (ESG) challenges responsibly. Ensuring Board independence is paramount; CS work to establish and maintain independence to prevent conflicts of interest that could compromise impartial decision-making on ESG matters. Moreover, CS strive to improve transparency in Board processes and decisions, fostering open communication between the Board, shareholders, and the public on the company's ESG performance. They also contribute to developing and periodically reviewing governance codes, policies, and guidelines that govern the Board's conduct, integrating ESG principles to guide its actions.

Internal Coordination:

Internal collaboration is crucial for Corporate Secretaries (CS). They coordinate with various departments, such as legal, finance, sustainability, and communications, to gather essential ESG data and insights. Additionally, they work closely with the Board of Directors, ensuring the Board recognizes the importance of ESG performance in driving long-term value creation and managing risks. In India, Company Secretaries play a multifaceted role in preparing accurate, transparent, and compliant ESG reports that deliver relevant information to stakeholders. They serve as intermediaries between the company and regulatory authorities, ensuring compliance with ESG reporting requirements. Their role is vital in demonstrating the company's commitment to ESG principles, promoting transparency, and building trust with investors, regulators, and the public.

Crisis Management:

In the event of environmental incidents, Corporate Secretaries (CS) are pivotal in coordinating the company's response, ensuring adherence to legal reporting requirements while working to mitigate reputational damage. In India, CS are actively involved in helping companies meet their environmental compliance obligations and foster responsible environmental stewardship, a key aspect of ESG performance. Their roles encompass a wide range of activities, including emissions monitoring, waste disposal compliance, resource consumption tracking, Environmental Impact

Assessments (EIAs), compliance audits, policy development, regulatory reporting, stakeholder engagement, employee training, Environmental Management System (EMS) implementation, and crisis management. Through these efforts, CS contribute significantly to the company's commitment to environmental sustainability and regulatory compliance, ultimately enhancing its overall ESG performance.

Company Secretaries play a vital role in helping companies in India fulfil their environmental compliance obligations and advance responsible environmental stewardship, a core element of ESG performance. Their responsibilities include monitoring emissions, ensuring waste disposal compliance, tracking resource consumption, conducting Environmental Impact Assessments (EIAs), performing compliance audits, developing policies, managing regulatory reporting, engaging with stakeholders, training employees, implementing Environmental Management Systems (EMS), and handling crisis management.

In India, Company Secretaries play a diverse role in preparing accurate, transparent, and compliant ESG reports that deliver crucial information to stakeholders. They serve as key intermediaries between the company and regulatory authorities, ensuring strict adherence to ESG reporting requirements. Their responsibilities are essential in showcasing the company's commitment to ESG principles, enhancing transparency, and building trust with investors, regulators, and the public.



**If you can change
your mind, you
can change
your life.**

— WILLIAM JAMES

BNS – A Comparison between Indian Penal Code, 1860 and Bharatiya Nyaya Sanhita, 2023

CS Keethana Gopal

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“ While IPC (Indian Penal Code for short) contained 511 Sections, the BNS (Bharatiya Nyaya Sanhita for short) contains 358 clauses. The definitions contained in Sections 8 to 52A of the erstwhile IPC have now been comprehensively consolidated under Section 2 of the BNS. The Bharatiya Nyaya Sanhita has been divided into 20 chapters dealing with a wide variety of crimes such as crimes against women and children and crimes against persons, property etc.”

On 23rd June 1957 the British East India Company, led by Robert Clive, defeated Siraj-Ud-Daulah, the Nawab of Bengal at the Battle of Plassey. As an aftermath of the battle, the Britishers were handed the diwani or the administrative rights over Bengal. This posed a problem to the East India Company. The Company had arrived at the Indian shores purely for trading in spices and was not interested in ruling Indian states. Hence for nearly the next one century the Britishers let the existing system of administration and law survive without major changes. However, after the 1857 Sepoy Mutiny, they introduced the Indian Penal Code of 1860.

The 1860 code was therefore not really meant for the welfare of the citizens, rather it was meant to avoid future sepoy mutinies and maintain colonial discipline. However, because the Indian Penal Code was not only exhaustive but had stood the test of time, it continued to remain in force even after independence well into the new millennium.

On the advent of the internet age and changes in the social outlook of the countries, many parts of the

erstwhile Indian Penal Code, 1860 began to be challenged before the various High Courts and the Supreme Court. The Supreme Court had recently struck down Section 377 of the erstwhile Indian Penal Code, 1860 which criminalized same-sex relationships as unnatural. Similarly, some provisions relating to adultery had to be struck down by the Supreme Court. The Supreme Court also had recognized live-in relationships – which were unheard of in the 1860s when the code was originally drafted.

So undoubtedly, there was a need for a change – firstly, we needed to shake off the archaic colonial laws and secondly, we needed to incorporate modern changes into the penal code. This led to the advent of the Bharatiya Nyaya Sanhita, 2023.

What are the major changes?

Apart from the nomenclature, which is now in Sanskrit, the scheme of the law has now changed. While IPC (Indian Penal Code for short) contained 511 Sections, the BNS (Bharatiya Nyaya Sanhita for short) contains 358 clauses. The definitions contained in Sections 8 to

52A of the erstwhile IPC have now been comprehensively consolidated under Section 2 of the BNS. The Bharatiya Nyaya Sanhita has been divided into 20 chapters dealing with a wide variety of crimes such as crimes against women and children and crimes against persons, property etc.

Apart from the existing punishments, Bharatiya Nyaya Sanhita has introduced a new punishment in the form of 'Community Service'. Though the implementation of this punishment is yet to take form its Object is said to be to reduce the burden on jails. BNS prescribes Community Service as punishment for petty offences like non-appearance in response to a proclamation, attempt to commit suicide, to compel or restraint exercise of lawful power of public servant, petty theft on return of theft money, misconduct in public by a drunken person, defamation, etc. The term "community service" is not defined in BNS. However, it is defined by Explanation to section 23 of Bharatiya Nagarika Suraksha Sanhita to mean the work which the Court may order a convict to perform as a form of punishment that benefits the community, for which he shall not be entitled to any remuneration. Community Service is a positive step towards a reformatory punishment. While the other provisions relating to punishment have remained the same, the definition of life imprisonment has been clarified to encompass the remaining portion of the individual's natural life.

Clause 48 of the new Sanhita penalizes any person who, residing abroad, abets the commission of an offence in India. This is also a positive step in prevention of abetment of offences in India from foreign soil.

Offences against women has also seen some reforms under the new Sanhita. Whereas earlier sexual intercourse or sexual acts by a man with his own wife, the wife not being under 15 years of age, was not considered rape, the age has now been enhanced to 18 years. While the earlier penal code brought the sexual intercourse with a woman on the promise of marriage under the ambit of rape, the new Sanhita has expanded on the same to include the term "deceitful means" which shall include inducement for, or false promise of employment or promotion, or marrying by suppressing identity. Clause 70 now provides for death penalty in case of gang rape of a minor which was not found in the earlier penal code.

The laws relating to offences against minors have been made slightly gender neutral i.e., whereas under Section 366A of IPC, procuring a minor girl was made an offence, now clause 96 of the new Sanhita has used the term 'child' below the age of 18 years, thereby including children of both genders.

The Sanhita has introduced a new provision i.e., Clause 103 which provides a punishment of death or up to life imprisonment in cases of mob lynching. It states that when a group of five or more persons acting in concert commits murder on the ground of race, caste or community, sex, place of birth, language, personal belief or any other ground each member of such group shall be punished with death or with imprisonment for life, and shall also be liable to fine.

Under the Indian Penal Code there was no minimum punishment under Section 304 for culpable homicide not amounting to murder (accidental deaths etc.) whereas under clause 105 of the Sanhita a minimum punishment of 5 years has been prescribed. Similar punishment has been prescribed under Clause 106 for death caused by negligence (hit and run etc.).

Clause 111 of the BNS introduces a new offence called 'organized crime' which seeks to combat regular offenders forming an organized crime syndicate. Such offenders are identified and awarded higher punishment/more severe punishment to deter formation of such organized crime syndicates. This definition is extended to include syndicates dealing in cybercrimes, extortion rackets, land grabbing etc. Clause 112 casts a similar net on petty organized crime i.e., organized syndicates dealing with petty offences such as thefts, cheating, unauthorized betting, gambling, selling of public exam question papers etc.

Clause 113 now provides a definition for Terrorist Act, while providing the police an option to either proceed under the Sanhita or under special laws such as UAPA etc. Though the provision relating to Sedition has been removed from the earlier Penal Code, A new section on acts of secession, armed rebellion, subversive activities, separatist activities or endangering sovereignty or unity and integrity of India has been added and made punishable under clause 152 of the Sanhita.

The earlier Penal Code had criminalized attempts to commit suicide. However, the new Sanhita, in line with the Mental Health Act 2017, has not penalized

attempts to commit suicide. But, under clause 226 an attempt to commit suicide with the intent to compel or restrain any public servant from discharging his official duty has been made punishable with up to one year imprisonment, fine or community service.

These are some of the highlights of the new criminal legal system in so far as BNS is concerned. Even the procedure as regards electronic evidence and the mode

of investigation has been changed under the Bharatiya Sakshya Adiniyama and Bharatiya Nagarika Suraksha Sanhita. Hence an attempt has been made by the State to overhaul the existing legal system to introduce a fresh system of law. A valid criticism exists though in the lines that the old system has not been truly abolished, rather, the new law is just old wine in a new bottle. Only time will tell whether the new system will result in more reformation than retribution.



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**National Convention of
Company Secretaries**

Theme
2024-25
SIRSI 2024-25
SIRSI 2024-25

Topic
SIRSI 2024-25
SIRSI 2024-25

Chairman
SIRSI 2024-25
SIRSI 2024-25

Registrations Open

52nd
National Convention of
Company Secretaries

November 8-9-10, 2024 | Hotel Sahara Sea, Mumbai

Theme : India@2047: Expanding Horizons for Professionals

Delegates Category	Early Bird Registration (From September 15, 2024 to October 10, 2024)	Early Bird Registration (From October 11, 2024 to November 10, 2024)	Registration Fee (From November 11, 2024 onwards)
Delegates of ICSI (ICSI-EDS)	Rs. 1,200	Rs. 1,500	Rs. 2,000
Associate/Chartered/MSD 2 (MSD and above) & Member (MSD and above)	Rs. 1,200	Rs. 1,500	Rs. 2,000
Member of ICSI	Rs. 1,200	Rs. 1,500	Rs. 2,000
Non-member/Foreign	Rs. 14,000	Rs. 17,000	Rs. 20,000
Foreign Delegates	USD 195	USD 235	USD 275

* Reduced fee of Rs. 1,000 for non-member delegates (MSD 1) is non-refundable for foreign delegates.

* Registration fee for ICSI (ICSI-EDS) is Rs. 1,200 for members and Rs. 1,500 for non-members.

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* Registration fee for ICSI (ICSI-EDS) is Rs. 1,200 for members and Rs. 1,500 for non-members.

Registration (Web): <https://123nvt.com/convention>



ICSI Secretariat | ICSI Chennai Branch | ICSI Kolkata Branch | ICSI Lucknow Branch | ICSI Mumbai Branch

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SIRSI 2024-25
SIRSI 2024-25

52nd National Convention of Company Secretaries

HOTEL BOOKING FOR DELEGATES

- The convention will be held at the Hotel Sahara Sea, Mumbai from November 8-9-10, 2024.
- The delegates are requested to book their rooms at the Hotel Sahara Sea, Mumbai from November 8-9-10, 2024.
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Room Type	Room No.	Room Rate	Room Amenities	Room Location	Room Contact
Single Room	101	10,000	10,000	10,000	10,000
Double Room	102	12,000	12,000	12,000	12,000
Triple Room	103	15,000	15,000	15,000	15,000
Quad Room	104	18,000	18,000	18,000	18,000
Executive Room	105	20,000	20,000	20,000	20,000
Presidential Room	106	25,000	25,000	25,000	25,000

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ICSI Hyderabad Branch | ICSI Jaipur Branch | ICSI Patna Branch | ICSI Ranchi Branch | ICSI Thiruvananthapuram Branch

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Pre- Packaged Insolvency Resolution Process (PPIRP)

Ms. Prity Kumari

CS Professional Student
Khusbu & Co.
Email Id: Damshelpriti@gmail.com



“A noteworthy feature of the provision is its pre-emptive nature within the Act. The section commences with a non-obstante clause “Notwithstanding anything contained in this Act...”, effectively establishing its dominance over all other provisions. This overriding authority becomes operational when a company incorporates the proportional representation framework outlined in Section 163 within its Articles”

Introduction

Insolvency and Bankruptcy Code - 2016 was introduced in the December 2015 in Lok Sabha and was presented in Lok Sabha on May 5, 2016. The Code received the assent of the President of India on May 28, 2016. Its Objective is to “consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner.” Scattered provisions of various acts like Indian Partnership Act - 1932, the Companies Act - 1956, RDDBFI Act - 1993, SARFAESI Act - 2002 and Companies Act - 2013 have been consolidated to form this Insolvency and Bankruptcy Code -2016 (IBC - 2016).

IBC was introduced to resolve the claims involving insolvent companies. This was intended to tackle the bad loan problems that were affecting the banking system. Since its inception, it has undergone several changes. One such change has been the introduction of Pre - Packaged Insolvency Resolution Process (PPIRP). The Insolvency and Bankruptcy code [Amendment] Ordinance, 2021 promulgated on 4th

April, 2021 provides for PPIRP for Corporate debtors classified as micro, small and medium enterprises. Insolvency and Bankruptcy Board of India notified the “Insolvency and Bankruptcy Board of India (Pre - Packaged Insolvency Resolution Process) Regulations, 2021” to enable its operationalization. This was enacted as an alternative to CIRP to mitigate financial distress caused to MSMEs during Covid - 19.

What is Pre - Packaged Insolvency Resolution Process (PPIRP)?

It is essentially a pre - arranged insolvency resolution plan between the distressed company and its creditors. A pre-pack is a restructuring plan which is agreed to by the debtor and its creditors prior to the insolvency filing, and then sanctioned by the court on an expedited basis. Therefore, a pre - packaged insolvency resolution process entails a process whereby a resolution plan is agreed to by the debtor and creditors and the insolvency resolution process is then initiated to get a formal approval from NCLT. Since the CIRP in India is time consuming and entails high cost, pre - packaged insolvency resolution process provides stakeholders with a cheaper and faster way of insolvency resolution. The minimum amount of default must be INR 10,00,000. And the

entire process is required to be completed within 120 days of commencement of PPIRP.

XYZ Motors Pvt Ltd, facing a debt of 5,00,000, proposed a PPIRP. Negotiated with the major creditor's ABC Bank and supplier PQR, they agreed to reduce the debt to ₹2,00,000, extending the repayment period. After NCLT approval, XYZ executed the plan, selling assets and restructuring. Successful completion reduced uncertainty, enabling XYZ to pay the reduced debt, fostering a financial revival and saving the business from liquidation.

Section 54A to 54P of the Insolvency and Bankruptcy Code, 2016 read with the Insolvency and Bankruptcy Board of India (Pre-packaged Insolvency Resolution Process) Regulations, 2021 lays down the provisions of a pre-packaged insolvency resolution process with respect to its initiation, manner of carrying out the process, appointment of resolution professional, termination etc.

Analysis of Various Sections of PPIRP

Here is a legal analysis of the sections involved in PPIRP:

- Section 54A: This section provides for the applicability of the PPIRP mechanism to corporate debtors that meet the prescribed criteria. It lays down the eligibility conditions for initiating the PPIRP process.
- Section 54B: This section provides for the preparation of a base resolution plan by the debtor. The plan should contain all relevant information and details required for the resolution of the corporate debtor.
- Section 54C: This section provides for the appointment of an insolvency professional who will act as a mediator between the debtor and the creditors for negotiating the resolution plan. The insolvency professional will also examine the plan and submit a report to the Adjudicating Authority (AA) regarding the feasibility and viability of the plan.
- Section 54D: This section provides for the submission of the resolution plan to the AA for approval. The AA may approve the plan with or without modifications, or reject it.
- Section 54E: This section provides for the initiation of the insolvency proceedings by the debtor or any other person authorized by the debtor, on the basis of the approval of the resolution plan by the AA.
- Section 54F: This section provides for the appointment of an interim resolution professional (IRP) by the AA. The IRP will take over the management of the affairs of the corporate debtor until the resolution plan is implemented.
- Section 54G: This section provides for the implementation of the resolution plan by the debtor or any other person authorized by the debtor, with the approval of the AA.
- Section 54H: This section provides for the reporting of the implementation of the resolution plan to the AA. The report should contain details regarding the implementation of the plan and the compliance of the debtor with the plan.
- Section 54I: This section provides for the consequences of non-implementation of the resolution plan by the debtor. If the debtor fails to implement the plan within the prescribed time, the AA may initiate the CIRP process against the debtor.
- Section 54J: This section provides for the provisions of the resolution plan to be binding on all stakeholders, including the central government, state government, and local authorities.
- Section 54K: This section provides for the protection of the resolution professional from any legal action for any action taken in good faith in the performance of his duties under the PPIRP process.
- Section 54L: This section provides for the applicability of the provisions of the PPIRP process to the resolution of the insolvency of partnership firms and individuals.
- Section 54M: This section provides for the power of the central government to make rules and regulations for the implementation of the PPIRP process.

Difference between CIRP & PPIRP

The Pre-Packaged Insolvency Resolution Process (PPIRP) and the Corporate Insolvency Resolution Process (CIRP) are both processes for resolving corporate debt or stress. PPIRP is a faster process that combines judicial and non-judicial processes, while CIRP is a formal judicial process that takes longer:

Time limit: PPIRP has a maximum timeline of 120 days for submitting and approving a plan, while CIRP has a maximum of 330 days.

Process: PPIRP combines judicial and non-judicial processes, while CIRP follows a formal judicial process supervised by the NCLT/NCLAT.

Objectives: PPIRP prioritizes the interests of operational creditors, while CIRP aims to maximize value for all creditors, including financial creditors.

Termination: A PPIRP can be terminated with a minimum of 66% vote of the COC, while a CIRP requires a minimum of 90% vote of the COC.

Conclusion

Pre-packaged Insolvency Resolution process (PPIRP) is an efficient and effective insolvency resolution framework for stressed companies, which balances the creditor interests and ensures

business continuity. While it provides faster resolution, reduced costs, and greater control, it also raises concerns about transparency, accountability, and potential abuse. With PPIRP, we have a powerful tool to navigate the complexities of insolvency and unlock the value for all involved. Overall, PPIRP is a valuable addition to India's insolvency landscape, but it also requires careful monitoring and refinement to ensure fair outcomes for all stakeholders.

RIDDLE

ME

THIS

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"Corporate Riddle"

I am the process you must never skip,

Before you sign, shake hands, or grip

from assets to debts, Revenue to Expenses I check every key,

I uncover the risks both hidden and clear

So, your business decisions are made just right.

Who am I

If you know the answer then what are you waiting for..?
Send us your answer along with your Photo to the below mentioned email id along with your full name, the first person to provide the answer will be published in the next edition with your Photo.

Email id: enewsletter.icsimysore@gmail.com

Answered by

Ms. Rachana Kini

CS Professional Student



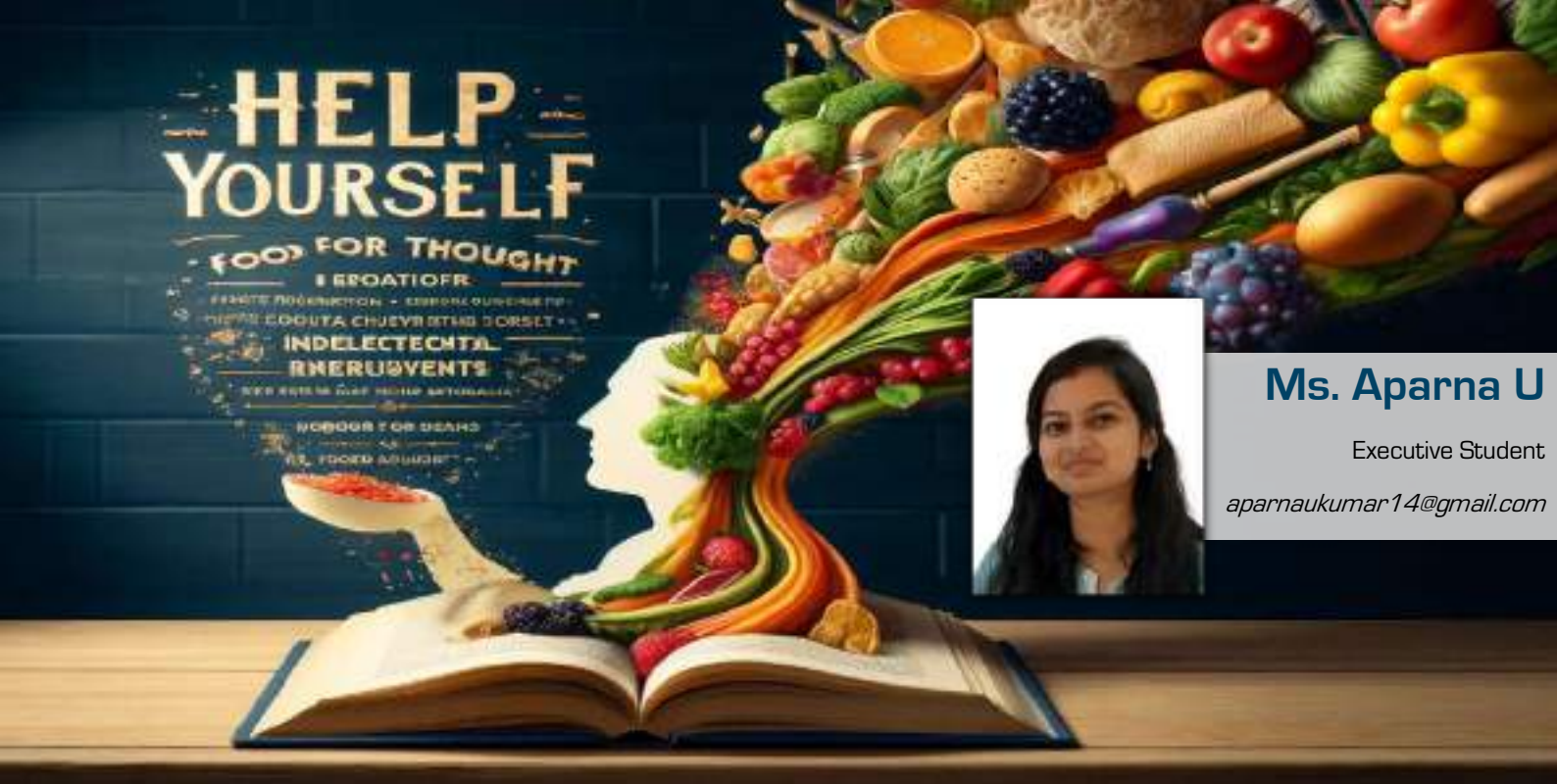
Last Month's Corporate Riddle

1. I speak the history of a company
 2. I act as evidence
 3. If you want funding start with me
- Who am I?

Answer: Minutes of the Meeting

03 Columns





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Becoming Supernatural

by Dr. Joe Dispenza

(part-2)

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.

As several past articles under this column have been on self-help books that touch upon neuroscience, here is yet another book but talking about it in great detail, therefore this article is part two in series of 'Becoming Supernatural' under this column.

Dr. Joe Dispenza is a scientist, teacher, lecturer, and author. He was one of the scientists featured in the award-winning film 'What the BLEEP Do We Know!?' He is the author of several New York Times bestsellers. I came across several videos and podcasts of Dr. Joe on YouTube which eventually led me to this book that we discuss today. In one of the podcasts, he mentioned how he started doing Yoga and later even conducted Yoga classes way before they were popular. He also talks about the book that changed his life- 'The autobiography of a Yogi' by Paramahansa Yogananda which is a very well-known book amongst spiritual seekers.

Books such as The Secret by Rhonda Byrne, The Power of the Subconscious Mind by Dr. Joseph Murphy and several others talk about the universe conspiring in our favour. Dr. Joe Dispenza is a neuroscientist and therefore nothing comes close to the explanation given in this book that we discuss today- 'Being Supernatural.'

The book throws light on how everyone desires extraordinary lives but they merely do anything extraordinary in their day to day lives. For the unknown to manifest, we must keep some time aside for taking up unknown things, each day.

If you are familiar with the law of attraction and affirmations, you must have come across the fact that our brain cannot differentiate a real experience and a thought. Experiments conducted on the same have been explained in the book and the neuroscience behind it which I will leave for you to explore from the book by yourself!

Change may be difficult for most of us and we often wonder why it is so. The book explains how our internal chemistry is affected by our emotions and external environment. A change in the external environment is no guarantee of change in internal chemistry because it is conditioned by our past emotions. This is why "living in the past" is hard to overcome. This information about change is quite refreshing and not everyone tells you about it. The author also mentions a way out of this problem: "You have to think greater than the way you feel to make any real, lasting change."

This book is so vast that it will take another article or more to give you a better glimpse of it before it finally becomes irresistible to pick it up. Until then, help yourself with food for thought



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Order for violation of Section 88 of Companies Act, 2013

Legal provision:

Section 88. Register of Members, etc.

(1) Every company shall keep and maintain the following registers in such form and in such manner as may be prescribed, namely:—

(a) register of members indicating separately for each class of equity and preference shares held by each member residing in or outside India;

(b) register of debenture-holders; and

(c) register of any other security holders.

(2) Every register maintained under sub-section (1) shall include an index of the names included therein.

(3) The register and index of beneficial owners maintained by a depository under section 11 of the Depositories Act, 1996 [22 of 1996], shall be deemed to be the corresponding register and index for the purposes of this Act.

(4) A company may, if so authorised by its articles, keep in any country outside India, in such manner as may be prescribed, a part of the register referred to in sub-section (1), called “foreign register” containing the names and particulars of the members, debenture-holders, other security holders or beneficial owners residing outside India.

1[(5) If a company does not maintain a register of members or debenture-holders or other security holders or fails to maintain them in accordance with the provisions of sub-section (1) or sub-section (2), the company shall be liable to a penalty of three lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees.]

Facts of the Case:

Whereas the company is M/s Cryo Scientific Systems Private Limited with CIN:U35999TN1998PTC039872 (herein after referred as 'company' or 'subject company') is a registered company with this office under the Companies Act, 2013 having its registered office at Chennai, Tamil Nadu.

An Inquiry was conducted on the affairs of the Company Ms. Cryo Scientific Systems Private Limited under Section 206(4) of the Companies Act, 2013 by an Officer authorized by the Central wherein the observations of the Inquiry Officer are as follows:

The Certified copies of Register of members are not maintained, Form 7C/SH-4 relating to transfer of shares were not filed since incorporation.

Accordingly, on submission of the Inquiry report, the Regional Director, Ministry of Corporate Affairs, has directed to take necessary action against the defaulters as per the provisions of the Companies Act, 2013.

After that the Authority has issued notice to the company and Officers in default vide N No. Roc/Chn.03987ZCRYO SCIENTIFIC/S.88/P.2 I / ADI /2028 dt 17.04.2024.

Reply by the Whole time Director on receipt of notice: The Director of the company vide letter dated 02.05.2024 submitted that due to flood in Chennai in the year 2015, many old documents and statutory registers got completed soaked and irreversibly damaged and could not be recovered. The list of shareholders is filed with Annual Return in Form MGT-7 and there will be no difference between the list of shareholders filed with Form MGT-7 and the Register of Members. The Register of Members can be recreated from the list, however, share transfer forms would not be possible to be recreated.

Adjudication hearing: The Authority had issued notice of hearing dt 02.05.2024 by fixing the hearing on 08.05.2024 at 12:45 PM. Pursuant to the notice dt 02.05.2024, Shri Gouri Shanker Mishra, appeared before the Adjudicating Authority on behalf of the company on 08.05.2024 and made submission that the company had always maintained the Register of Members and many old documents including the Registers were damaged in the flood in Chennai in the year 2015. All shareholders are aware of the shareholding and no changes have taken place since the last few years.

Decision: Having considered the facts and circumstances of the case and after taking into account the factors above it is concluded that the company and Officers in default violated Section 88 of the Act, 2013 by not furnishing the Registrar of Members in Form MGT-1 and Form 7C/SH-4 relating to transfer of shares and therefore the Company and its Officers in default are liable for penalty as prescribed under Section 88(5) of Companies Act, 2013

The details of the penalty imposed on the Company and its officers in default are as follows:

Rs.1,50,000/- (Ru One lakh fifty thousand) is imposed on the Company and Rs.25,000/- Twenty-five thousand) is imposed on each Officers in default. Totally Rs. 1,75,000/- One lakh seventy-five thousand] as penalty amount for violation of Section 88 of the Act,2013.

Analysis: It is a well-established law that Register of Members is a permanent and statutory document and not maintaining proper documentation as per the Companies Act, 2013 may attract penalty even if the violation took place a long time ago. The 8-year cut-off for other papers and documents does not apply to permanent statutory registers like the Register of Members. Therefore, Companies need to be careful in preserving and maintaining the records as per law to avoid liability and penalty. Further, it is to be taken note that the penalty levied in this instant case is less compared to the one provided actually in the Section owing to the fact that M/s Cryo Scientific Systems Private Limited falls under the category of "small company".

Orders for violation of Section 135 of Companies Act, 2013 r/w relevant Rules

Legal provision: Relevant portion is mentioned for the sake of brevity

135. Corporate Social Responsibility.

[1] Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during the immediately preceding financial year] shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more Directors, out of which at least one director shall be an independent director.

[5] The Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years 7[or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years], in pursuance of its Corporate Social Responsibility Policy:

Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities:

Provided further that if the company fails to spend such amount, the Board shall, in its report made under clause [o] of sub-section (3) of section 134, specify the reasons for not spending the amount 8[and, unless the unspent amount relates to any ongoing project referred to in sub-section (6), transfer such unspent amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year].

Section 134:

[3] There shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include—

[o] the details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year;

Facts of the case: M/s Prabhu Spinning Mills Pvt. Ltd. is a company registered under the Companies Act, 1956 and having its registered office at Tirupur District, Tamil Nadu. In the Financial Year 2014-15 it became eligible was CSR spending attracting Section

135 as its Net Profit for previous Financial Year was more than Rs. 5 crores. Since the Company had not spent any money towards CSR activities, the Board had explained in its Board report that, "it is in the process of identifying appropriate eligible CSR projects as mandated under Section 135 (4)(a). In the next Financial Year (2015-16) too, the CSR amount was unspent and the Company had provided the same explanation as mandated under Section 135(3)(o) in its Board Report as last year. In the Financial Year 2016-17, the Company has spent all the eligible amount towards CSR activities. The same was also disclosed in the Board Report for the year but it was not disclosed in the tabular format as prescribed in the Companies (CSR) Rules, 2014.

Subsequently, the ROC had launched prosecution in the Court. Additional District and Sessions Judge of Coimbatore after issuing necessary show-cause notices to the officers in default as during the years 2014-15 and 2015-16, violation of CSR provisions was considered as criminal offences. They were decriminalised in Companies Amendment Act, 2019 and 2020 and became civil non-compliances or defaults to be adjudicated by Adjudicating Authority. The Company obtained orders from the High Court of Madras in the year 2023 and based on that, the cases were transferred to the Adjudicating Authority i.e., ROC, Coimbatore.

Adjudication hearing: Notices were sent to the Company and its Directors on 05.08.2024 for:

- a. Failure to spend 2% of Average Net Profits for the preceding three Financial Years and failure to give a valid explanation for the non-compliance violating Section 135(5) r/w Section 135(4)(o).
- b. Although monies were spent in the FY 2016-17, the disclosure of amount spent and project details were not provided as per para 5 of the Annexure under Rules 8 of the Companies CSR Rules, 2014.

The Company replied stating that in both the cases, proper disclosures and explanations were provided in the Board Report.

Decision and Analysis: Issues are divided and orders passed as under-

- a. Whether the Company has given proper explanation in the Board Report for not spending the mandatory CSR amount as provided under Section 135(5)?

The question to be decided here is whether "it is in the process of identifying appropriate eligible CSR projects as mandated under Section 135 (4)(a)" a tenable explanation for not spending CSR amount for consecutively 2 years. The ledger accounts showed that an amount of Rs, 18,50,000/- was shown as Provision for CSR spending in the year 2014-15 and similar entries were made in the year 2015-16. In the year 2016-17 all eligible monies were spent towards CSR activities showing the intent of the Company to be true and backed by amounts shown in the provisions. Hence the explanation provided in the Board Report for not spending the amounts are true and proper and non-compliance is found.

- b. Whether Company has disclosed CSR related details in the format prescribed under the CSR Rules, 2014?

Although Company has spent the entire eligible amount towards CSR activities in the year 2016-17, the Annexure to the Board report provides the details of the amount spent in a plain manner and does not follow the tabular format prescribed in the Company CSR Rules, 2014 Rule 8 and has resulted in procedural irregularity. The Adjudicating officer took note that it is an established legal principle that procedural fault cannot vitiate the substantial action itself and hence this minor lapse may not attract the same penalty as substantial violation.

Therefore, the minimum penalty being Rs. 10,000/- as provided under Section 450 of Companies Act, 2013 for any non-compliance was imposed in this case and penalty below such amount cannot be imposed.

Brainy Bits



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ICSI Mysuru E-Magazine

WORD SEARCH - 3

(Based on Chapter 1 of Companies Act, 2013)

ANSWERS

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



1. The one who winds up, sounds more like water - LIQUIDATOR (10)
2. "EXPERT" includes an engineer, a valuer, a chartered accountant, a company secretary, a cost accountant and any such person who is bestowed with the authority to issue a certificate under any law for time being in force (6)
3. Used for referring a person of authority, However, Companies Act refers them to person providing instructions to Board of Directors - OFFICER (6)
4. EXPRESSIONS used which are not defined under the Companies Act but are defined in the Securities and Exchange Board of India Act, 1992 or Securities Contracts (Regulation) Act, 1956 or the Depositories Act, 1996 shall have the respective meanings assigned to them in those respective acts. (11)
5. What is to advice and authorise authoritatively is to redirect to rules under Companies Act, 2013 - PRESCRIBED (10)
6. Any company which transacts the business of banking in India - BANKING COMPANY (7,7)
7. A person with an obligation to hand out towards the assets of the Company - CONTRIBUTORY (8,9)
8. This includes declarations, orders, notices, summons, requisitions and registers whether given out, sent out or maintained in pursuance of the act - DOCUMENT (8)
9. The total votes which may be cast in regard to any matter on a poll at meeting assuming all the members including their proxies having right to vote on that matter are present at meeting and cast their vote - TOTAL VOTING POWER (5,6,5)
10. REGISTRAR means a person having the duty of discharging various functions under this act including maintaining the register of companies in paper or in any electronic mode (9)



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The Anatomy of a Scam: A Cautionary Tale from a Photographer's Life

In just one week, I witnessed three different financial scams, all targeting people I personally know. One of these scams hit incredibly close to home—it involved my own brother, who is a professional photographer. He manages his business using social media platforms like Instagram and Facebook, making it easy for clients to reach out for event bookings. But it also opened the door for a scam that could have cost him a significant sum of money.

The Setup: A Seemingly Normal Inquiry

A few days ago, my brother received a call from someone inquiring about his photography services for a birthday event. This wasn't unusual; he gets calls like this all the time. However, the caller identified himself as a member of the Indian Army, which instantly made the conversation feel more trustworthy. Claiming that he had been referred by a friend, the caller asked for details about my brother's availability and rates. After a short conversation, they agreed on a price.

The caller mentioned that he would send ₹1 as a token of confirmation and promised to send an advance payment shortly after. My brother received a message confirming the ₹1 transfer, which gave him no reason to doubt the caller's intentions.

The Twist: A Fake Overpayment

Then, things started to take a strange turn. The caller followed up, saying he would now transfer ₹3,000 as an advance payment. But a few minutes later, my brother received another message—this time claiming that ₹13,000 had been transferred to his account by mistake. The caller quickly rang him back, explaining that he had accidentally sent ₹13,000 instead of the agreed ₹3,000. He apologized profusely and asked my brother to return ₹10,000 to correct the error.

At this point, my brother, like many of us, had a soft spot for members of the armed forces. He felt bad for the caller's mistake and was ready to help by returning the excess amount. However, before taking any action, he did the smart thing—he checked his bank balance. To his surprise, no money had been deposited. Despite receiving a message confirming the ₹13,000, his account hadn't been credited at all.

The Red Flags: Catching the Scam in Time

Upon closer inspection, we realized that the messages my brother had received weren't from his bank. Instead, they were sent from a regular mobile number, not a legitimate bank notification system. Additionally, the account details mentioned in the message were incorrect. This is when we knew for sure that something was off.

To further solidify his story, the caller sent fake screenshots of the supposed transfer and even shared pictures of an army ID card, trying to build more credibility. The documents, however, were obviously fake once we took a closer look. When my brother confronted him about the inconsistencies, the scammer cut the call and stopped answering altogether.

A Common Scam: Targeting Small Business Owners

After the incident, my brother shared the details of the scam in a group of photographers he's a part of. To our surprise, many others in the group had received similar calls from the same number. Luckily, most of them had been too busy to respond, avoiding potential losses. This incident revealed a wider scam that was targeting people in the same industry, attempting to exploit their trust and respect for members of the armed forces.

Lessons Learned: How to Protect Yourself

This experience was a wake-up call, especially for small business owners who rely on platforms like Instagram and Facebook to connect with clients. These platforms can make it easy for scammers to approach you under the guise of being a potential customer. Here are some key takeaways from the incident:

Double-Check Transaction Details: Always verify any claims of overpayments or errors. Check your bank account before taking any action, and look closely at the source of any messages about funds.

Trust, But Verify: It's easy to fall into the trap of trusting someone based on their profession or a seemingly

legitimate story. But scammers are becoming more sophisticated. Verify their identity through official channels or trusted sources before engaging further.

Stay Calm Under Pressure: Scammers often try to create urgency, making you feel like you have to act immediately to resolve a mistake. Always take your time to think, verify, and consult someone else if needed before taking any financial action.

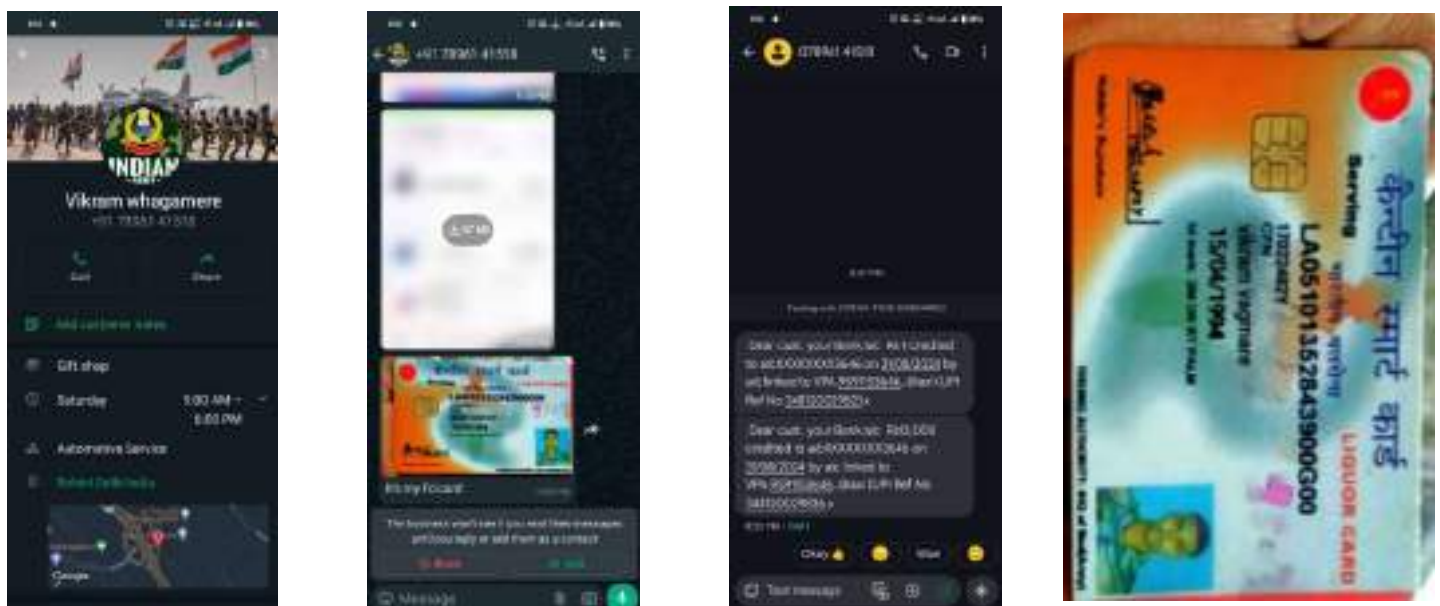
Report the Scam: If you encounter a scam, don't stay silent. Share the incident with your peers in the industry to make them aware of the potential threat. Also, file a report with local authorities or the cybercrime department to help track and prevent future scams.

Be Cautious with Personal Details: Ensure that the information you share on public platforms is limited to what's necessary for your business. Scammers often use publicly available information to build trust and credibility before targeting you.

Stay Vigilant and Act Quickly

In today's digital age, scams are becoming more creative and harder to detect. Whether you're a small business owner or just an individual using online platforms, it's crucial to stay vigilant and think twice before making any financial moves. If something doesn't feel right, trust your instincts, verify the facts, and report any suspicious activity to the proper authorities. By sharing our experiences and staying informed, we can help prevent others from falling into similar traps.

The pictures we received from the Scammer





Manthan 2024

Compiled by:

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Accrescent Managed Services Private Limited



MANTHAN 2024"

A unique 2 days Seminar/workshop on "Critical Issues in Corporate Laws"

We thank CS Ullas Bhat and CS Anusha Mantri for sharing their notes. Prajwal, and Aakash students of ICSI are compiling the posers. It has been guided and reviewed by CS Pavitra.

Disclaimer: This may not be the final answer but when you come across with such situations this could be one angle to think of and these are some of the sections to look at.

A2. ABC Private Limited by virtue of being a subsidiary of PQR Limited is to be considered as a Public Company in terms of the provisions of Section 2(71) of the Companies Act 2013 though ABC continues to be a private company in its articles.

- If ABC can accept deposits from relatives of directors?
- If ABC can qualify as an eligible Company and accept deposits from public?
- PQR wants to give a loan to ABC. Do you see any challenge in the grant of loan by PQR to ABC, if PQR and ABC have a common director?

Note:

Core Questions

- Whether privileges allowed to PQR Limited a public company also allowed for a subsidiary of public company (deemed to be public company)?
- Whether all compliances of public company be complied subsidiary of public company (deemed to be public company)?

- Whether any challenges in the granting of loan by PQR limited to ABC Private Limited when having a common director?

Definitions of Private Company Section 2(68) and definition of Public Company Section 2(71) should be evaluated to decide how does ABC Private Limited should be treated.

View of the Manthanites

ABC Private Limited will be considered a public company under section 2(71) since it is a subsidiary of PQR Limited. Once a private company becomes subsidiary of a public company and thereby deemed to be a public company, all the perquisites enjoyed by a public company shall be allowed for ABC Private Limited. In the same manner, all the restrictions imposed on public companies should also be imposed on ABC Private Limited. Once a private company is deemed to be a public company as per section 2(68), then the exemption notification dated 5th June 2015 available for private limited will no longer be available.

Further, unlike the 1956 Act, the 2013 Act does not restrict a private limited from accepting the deposits from public. Upon complying with certain terms and conditions as mentioned in the Act and the rules made for this purpose, the private companies can accept the deposits. Rule 2(1)(viii) of Acceptance of Deposit Rules should be complied

Acceptance of money from a relative of the director is treated as an exempted deposit irrespective of the nature of the company i.e. private or public. Hence ABC Private Limited can accept money from the relative of the director subject to other conditions.

PQR limited can provide loan to ABC private limited subject fulfilment of section 185(2) and its related explanation in relation to having a common director between the 2 companies.

The sections and provisions to be considered are Section 76 (1) and its provision, and Section 185(2)

Rule 2(1)(e) states what is “eligible company”, means a public company as referred to in sub-section (1) of section 76, having a net worth of not less than one hundred crore rupees or a turnover of not less than five hundred crore rupees and these eligible companies should comply with the provision to making any invitation to the Public for acceptance of deposits

A3. ABC Private Limited having paid up share capital of Rs. 5 crores has voluntarily appointed Mr. A, Mr. B & Mr. C as its CEO, CFO & CS. However, has not filed form DIR 12 for the said appointments. ABC has received a show cause notice from the Registrar of Companies for noncompliance of various provisions of the Companies Act, 2013, on account of acceptance of unsecured loan from a member without complying the provisions of Section 73, non-spending of CSR amount, violation of section 185 and 186 and non-filing of Form DIR 12 for the appointment of CEO, CFO & CS. ROC has asked ABC to justify as to why CEO, CFO & CS should not be regarded as KMP and punished accordingly?

- a. What is your view on CEO, CFO and CS being considered as KMP by ROC?
- b. Is there any association/difference between the definition of KMP defined under clause (51) of section 2 and the description of KMP given under section 203 of the Act?
- c. Whether the definition provided under clause (51) of section 2 is applicable to private companies? If yes, a private company wishes to voluntarily appoint a CEO/CFO, should Form DIR-12 under sub-section (2) of 170 of the Act, be filed for such appointment and change thereof and such person shall be regarded as KMP?
- d. If a person appointed voluntarily under the designation of CEO/CFO/CS shall be KMP?

Note:

Core Questions

Whether the CEO, CFO and CS who are appointed voluntarily by a private limited company, become the KMP for the purpose of the Act even if DIR 12 is not mandatorily to be filed?

Supporting Sections and definitions to look in to are Section 2(51), Section 203(1) and Section 170(2) of the Act read with rule 18 of Companies (Appointment and Qualifications of Directors) Rules, 2014

Views of participants of Manthan:

- Any person appointed as CFO, CEO or CS in a private limited company on voluntary basis, will be considered as the KMP under section 2(51) of the Companies Act. Filing or not of DIR 12 will not affect this stand. Once the appointment is made to the said positions, they will be considered as KMPs irrespective of filing of forms.
- In the present case of ABC Private Limited, having paid up capital of 5 Crore has voluntarily appointed CEO, CFO and CS. Under section 2(51) and 203 the voluntary appointment of CEO, CFO and CS will be considered as KMP under the Companies Act, 2013.



Beneficial Interest

Let us break down a concept under Members and Shareholders and understand them well, with the help of a simple example.

Persons not Holding Beneficial Interest in any Share

Beneficial Interest refers to the rights and profits that a shareholder is entitled to. Such as, the shareholder's right to vote and receiving or participating in dividends.

This entitlement may be alone or together with other persons.

Can a person whose name is not entered in the Register of Members hold Beneficial Interest to shares of a Company?

Of course, it is possible. That is why this entire concept and the need for various declarations by different parties to such shares is necessary.

Here is an example. Ms. Latha is busy in writing books; in running the business and the various other charity work that she undertakes. But she is interested in holding certain shares of a start-up that has sustainable alternatives to production of leather and vegan leather (which is vegan but not sustainable.)

So, Geetha who, let's say is an acquaintance of Ms. Latha owns the shares of the said company on the

latter's behalf. However, they have arrived at an agreement between them that the Beneficial Interest shall lie with Ms. Latha, therefore she shall be called Beneficial Owner. So, Geetha becomes the person not holding beneficial interest.

Now, who all are required to make declarations? Let us see:

Relevant Section and Rules:

Section 89 of Companies Act r/w Rule 9 of the Companies (Management and Administration) Rules, 2014.

- Geetha has to make a declaration in Form No. MGT 4 within 30 days from the date of entering her name in the Register or date of change in Beneficial Interest as the case may be.

[Section 89(1): Section 89(1) of the Companies Act, 2013 read with the Companies (Management and Administration) Rules, 2014 makes it obligatory on the part of a person, whose name is entered in the register of members of a company as the holder of a shares in that company but who does not hold beneficial interest in such shares, a declaration to the company specifying the name and other particulars of the person who holds the beneficial interest in such shares.

Similarly, Section 89(3) applies when change occurs in holding Beneficial Interest.]

- Ms. Latha, the Beneficial Owner shall disclose her beneficial interest in Form No. MGT 5 within 30 days of acquiring such beneficial interest.

[Section 89(2) of the Act, makes it obligatory for any person who, holds or acquires beneficial interest in a share of a company to make a declaration to the company specifying the nature of his interest, the particulars of the person in whose name the shares stand registered in the books of the company and such other particulars as may be prescribed.]

- The company shall make a note of such declaration and file a return:

[Section 89(6) of the Act specifies the company to make note of such declaration in the register of members and shall file, within 30 days from the date of receipt of declaration, in Form No. MGT 6 with the Registrar in respect of such declaration with fee.]

Penal Consequences

Following are the Sections verbatim, but let us remember with the help of a table further.

Section 89(5) of the Act, provides that if any person fails to make a declaration as required under sub-section (1) or sub-section (2) or sub-section (3) of Section 89, he shall be liable to a penalty of fifty

thousand rupees and in case of continuing failure, with a further penalty of two hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.

Section 89(7) of the Act, says if a company, required to file a return under sub-section (6), fails to do so before the expiry of the time specified therein, the company and every officer of the company who is in default shall be liable to a penalty of one thousand rupees for each day during which such failure continues, subject to a maximum of five lakh rupees in the case of a company and two lakh rupees in case of an officer who is in default.

Person	Penalty of ₹ 50,000 Continuing failure: ₹200 each day (Maximum: ₹ 5,00,000.)
Company Officers in Default	₹1000 each day (Maximum for Company: ₹5,00,000 Maximum for Officer in Default: ₹2,00,000)

In the next article under this column, let us understand the concept of Significant Beneficial Owner.



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Companies Act, 2013

Updates on Notifications

MCA has amended Companies [Compromises, Arrangements and Amalgamations] Rules, 2016 which shall be known as Companies [Compromises, Arrangements and Amalgamations] Amendment Rules, 2024.

In the Principal rule, the following sub-rule shall be inserted after sub-rule 4 of rule 25A.

"(5) Where the transferor foreign company incorporated outside India being a holding company and the transferee Indian company being a wholly owned subsidiary company incorporated in India, enter into merger or amalgamation, –

- (i) both the companies shall obtain the prior approval of the Reserve Bank of India;
- (ii) the transferee Indian company shall comply with the provisions of section 233;
- (iii) the application shall be made by the transferee Indian company to the Central Government under section 233 of the Act and provisions of rule 25 shall apply to such application; and
- (iv) the declaration referred to in sub-rule (4) shall be made at the stage of making application under section 233 of the Act."

These rules shall come into force on 17th day of September, 2024.

G.S.R 555(E)

MCA has amended Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 which shall be known as Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Second Amendment Rules, 2024.

Schedule II, III and IV of the rules has been amended, the amendment covers the submission of legal heir certificate and additional documents required to be attached.

The notification is available at <https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=NDc2MDYwMDU2&docCategory=Notifications&type=open>

G.S.R 552(E)

MCA has amended Companies (Indian Accounting Standards) Rules, 2015 which shall be known as Companies (Indian Accounting Standards) Second Amendment Rules, 2024.

In the Companies (Indian Accounting Standards) Rules, 2015, in the 'Annexure', under heading "B. Indian Accounting Standards (Ind AS)", in "Indian Accounting Standard (Ind AS) 116", –

(i) after paragraph 102, the following paragraph shall be inserted, namely: –

"102A After the commencement date, the seller-lessee shall apply paragraphs 29–35 to the right-of-

use asset arising from the leaseback and paragraphs 36–46 to the lease liability arising from the leaseback. In applying paragraphs 36–46, the seller-lessee shall determine 'lease payments' or 'revised lease payments' in a way that the seller-lessee would not recognise any amount of the gain or loss that relates to the right of use retained by the seller-lessee. Applying the requirements in this paragraph does not prevent the seller-lessee from recognising in profit or loss any gain or loss relating to the partial or full termination of a lease as required by paragraph 46(a).";

The notification is available at <https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=NDc2MDU5OTYw&docCategory=Notifications&type=open>

G.S.R 554(E)

CENTRAL GOODS AND SERVICES TAX ACT, 2017/ INTEGRATED GOODS AND SERVICES ACT, 2017

S.O.(E).—In exercise of the powers conferred by clause (b) of sub-section (2) of section 1 of the Finance Act,

2024 (8 of 2024), the Central Government hereby appoints, —

(a) the 1st day of October, 2024, as the date on which the provisions of sections 13 of the said Act shall come into force;

(b) the 1st day of April, 2025, as the date on which the provisions of sections 11 and 12 of the said Act shall come into force.

[F.No. CBIC-20006/20/2023-GST]

No. 16/2024–Central Tax Dt. 06-08-2024

No Notification on IGST issued for the period 14-08-2024 to 13-09-2024

Clarification in respect of advertising services provided to foreign clients - a. Whether the advertising company can be considered as an "intermediary" between the foreign client and the media owners in terms of section 2(13) of Integrated Goods and Services Tax Act, 2017 (herein after referred to as the "IGST Act"), thereby resulting in determination of place of supply under section 13(8)(b) of the IGST Act?

b. Whether the representative of foreign client in India or the target audience of the advertisement in India

can be considered as the recipient of the services being supplied by the advertising company under section 2(93) of CGST Act?

c. Whether the advertising services provided by the advertising companies to foreign clients can be considered as performance-based services as per section 13(3) of the IGST Act?

Above subject matter clarified in Circular No. 230/24/2024-GST Dt.10-09-2024

Clarification on availability of input tax credit in respect of demo vehicles- i. Availability of input tax credit on demo vehicles, which are motor vehicles for transportation of passengers having approved seating capacity of not more than 13 persons (including the driver), in terms of clause (a) of section 17(5) of Central Goods & Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act').

ii. Availability of input tax credit on demo vehicles in cases where such vehicles are capitalized in the books of account by the authorized dealers No Circular issued for the period 14-08-2024 to 13-09-2024 for IGST

Above subject matter clarified in Circular No. 231/25/2024-GST Dt. 10-09-2024

Clarification on place of supply of data hosting services provided by service providers located in India to cloud computing service providers located outside India - (i) Whether data hosting service provider qualifies as 'Intermediary' between the cloud computing service provider and their end customers/users/subscribers as per Section 2(13) of the Integrated Goods and Services Tax Act, 2017 (herein after referred to as the "IGST Act") and whether the services provided by data hosting service provider to cloud computing service providers are covered as intermediary services and whether the place of supply of the same is to be determined as per section 13(8)(b) of IGST Act.

(ii) Whether the data hosting services are provided in relation to goods "made available" by recipient of services to service provider for supply of such services and whether the place of supply of the same is to be determined as per section 13(3)(a) of the IGST Act.

(iii) Whether the data hosting services are provided directly in relation to "immovable property" and whether the place of supply of the same is to be determined as per section 13(4) of the IGST Act

Above subject matter clarified in Circular No. 232/26/2024-GST Dt. 10-09-2024

Clarification regarding regularization of refund of IGST availed in contravention of rule 96(10) of CGST Rules, 2017, in cases where the exporters had imported certain inputs without payment of integrated taxes and compensation cess -

Circular No. 233/27/2024-GST Dt. 10-09-2024

No Notification on GST (rate) issued for the period 14-08-2024 to 13-09-2024 for both CGST & IGST

Applying para 2(g) of Instruction No. 01/2023-24-GST (Inv.) dt. 30-3-2024 in Audit matters- Instruction No. 03/2024-GST Dt. 14-08-2024

Guidelines for Second special All-India Drive against fake registrations - Instruction No. 02/2024-GST Dt. 12-09-2024



**THE INSTITUTE OF
Company Secretaries of India**
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IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)



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