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**ICSI - WIRC**

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# FOCUS

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“प्रगतिश्च विकासश्च जीवनं जीवनं खलु।”

A MONTHLY JOURNAL FOR CORPORATE EXECUTIVES & PROFESSIONALS



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(A Compendium on Sections 295, 297, 299, 300, 301, 314 & AS-18)



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Dear All,



**"If you think it's expensive to hire a professional to do the job, wait until you hire an amateur."**

**-Red Adair**

The month was historic for ICSI-WIRC, if I may say so. We organised the first-ever State Conference in the State of MP, celebrated 41st Anniversary Day of ICSI-WIRC, organised first re-union of MSOPs of ICSI-WIRC and co-hosted one of the most successfully organised National Convention at Aamby Valley. Let me present some of the highlights of major developments at ICSI-WIRC since my last communiqué.

✓ **ICSI-WIRC MP State Conference** : I am pleased to share that the first State Conference of ICSI-WIRC was organised in Bhopal, State of MP by ICSI-WIRC alongwith the Chapters of MP on 15th & 16th September on the theme 'Business, Governance & Madhya Pradesh'. The Conference was inaugurated by Hon'ble Minister Mr. Sartaj Singh, Mr. A.K.Jain, Chief Commissioner of Income Tax, MP & CG and Mr. Vishwas Sarang, MLA, & Chairman- MP Laghu Van Upaj Sangh. The galaxy of eminent speakers included M/s. P D Mishra, Amarjeet Khalsa and along with others. The Valedictory session was chaired by Mr. D.S. Choudhry, Commissioner of Income Tax. Comprehensive backgrounder, relevant sessions, unprecedented number of audience made this Conference a grand success. I compliment Mr. Amit K Jain, Program Director and his team.

The MP State functionaries appreciated the role and deliverables of CS and I do believe, this would go a long way in broad-basing the role of company secretaries even at State-level. This endorses the purpose and need of organising such a Conferences and also aids to our direction for future.

- ✓ **ICSI National Convention, 2012** : ICSI National Convention was co-hosted by ICSI-WIRC at Aamby Valley, Lonavla on 4th-6th October. I am pleased to share that, it received over-whelming response and perhaps for the first time, we had to close the registration much before the Convention dates. More importantly, the Convention was organised very smoothly and your western region was appreciated by one and all for supporting one of the most successfully organised Conventions of ICSI.
- ✓ **Release of new Edition of Publication on Related Party Provisions** : On the occasion of ICSI National Convention, ICSI-WIRC released its new publication, "Compendium of Related Party Provisions". The publication is being appreciated largely and I do complement Mr. Prakash Pandya, Chairman, Professional Research & Publications Committee, ICSI-WIRC and his team for making another research publication a reality.
- ✓ **ICSI-WIRC Foundation Day Celebrations** : I am pleased to share that for the first time in recent past, ICSI-WIRC celebrated its anniversary day. On 11th October, 2012, ICSI-WIRC completed its 41 years from the date of its first formal inauguration way back on 11th October, 1971.

The program was inaugurated by M/s. P K Malhotra, Hon'ble Acting Presiding Officer, SAT, S A Millath, Regional Director, MCA, Ashish Chauhan, Interim CEO, BSE, S P Tulsian, Investment Advisor, S N Ananthasubramanian, VP, ICSI, B Narasimhan and Atul Mehta, Central Council Members. Galaxy of Past Presidents and Past Chairmen from western region graced the occasion. It was our pleasure felicitating them alongwith members who have been contributing this year actively to ICSI-WIRC.

- ✓ **MSOP Re-union** : For the first time, ICSI-WIRC organised its MSOP re-union on the occasion of 41st Anniversary Day celebrations. Several members who participated in WIRC MSOPs met together and shared their experience.
- ✓ **Investor Awareness Programs** : I am pleased to share another initiative of ICSI-WIRC whereby we would be organising a series of Investor Awareness Programs jointly with MCA and BSE in remote and semi-urban areas across the region. I appeal members to participate as faculty, coordinator etc. and help WIRO accomplish a mammoth task of organising 100 such programs in a short span of 3 months, as desired by MCA.
- ✓ **Media Coverage & Brand Building** : The month witnessed vast media coverage. We organised 2 press conferences – one at Bhopal on the occasion of State Conference and another at Aamby Valley on the occasion of National Convention. Media including prominent print and online media covered our initiatives and programs. We also unveiled a video '**ICSI-WIRC: Reaching New Heights**' on the occasion of ICSI-WIRC 41st Anniversary Day celebrations.

Please do write at [wirc.chairman@icsi.edu](mailto:wirc.chairman@icsi.edu) / [cschairman.wirc@gmail.com](mailto:cschairman.wirc@gmail.com) Your suggestions and inputs would help achieve the overall objectives towards our theme of the year 2012 - "*Educate, Empower & Execute*".

Best Wishes,



Cordially -Mahavir Lunawat  
October 16, 2012

#### Requests...

- Become a member of ICSI Benevolent Fund (CSBF)
- Help in fund-raising initiatives of ICSI-WIRC
- Become a member of WIRC Professional Membership Scheme (PMS)



Dear Readers,

**"The individual who wants to reach the top in business must appreciate the might and force of habit. He must be quick to break those habits that can break him – and hasten to adopt those practices that will become the habits that help him achieve the success he desires".**

**J. Paul Getty**

Every one of us desire to be at the top of the ladder of whatever we do; but the key question is how to reach there and sustain at that level – the answer is ‘ Self Discipline’

Discipline is a ‘must have’ trait for everyone, whether one is a student or a professional. Discipline will help one to sail through tough times and emerge as an ultimate winner in long run - Self Discipline is a synonym to a successful life, the life which we all want to live.

Our life is like a wheel and each fork represents one aspect of life like professional life, family, health, charity etc - one has to be equally disciplined towards each of the aspects so as to keep the wheel rolling in a balanced manner.

If we look at the big business houses in India, all have sustained growth through their disciplined approach towards their business requirements and at the same time have also taken care of society through CSR activities – this helps them to develop their brand worldwide.

In our dynamic professional world, one has to be fully updated with all changes/ amendments in legal and financial field, which can be possible only through dedicated and disciplined approach. The institute also keeps on conducting seminars on new topics so as to keep the professional abreast of new developments. The institute recently organized National Conference at Ambey Valley, Lonavla, Maharashtra, Where it covered such topics of interest.

Happy reading!!!

**CS Amit Kumar Jain**

*“Every moment is an experience.” - Jake Roberts*

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**CASE LAWS AT A GLANCE****RECENT JUDGEMENTS ON COMPANY LAW***CS Ajay Kumar, Practising Company Secretary, Mumbai***1. AMALGAMATION**

Petitioner Company filed its Petition seeking approval of scheme of its amalgamation with transferee-company. A perusal of scheme of arrangement indicated that interest of equity shareholders, staff workmen and employees had been taken care and provided for in scheme. In response to public notice issued, none of staff or employees or whosoever may be effected, raise any objections with regard to their rights. It was not prejudicial to their interest, since they would be continuing in transferee-company and shareholders would be allotted shares of transferee-company, rates for which had been worked out by experts. In view of above and taking notice of basic requirement of scheme and also considering fact that neither Regional Director nor Official Liquidator had raised any objections with regard to scheme, scheme as proposed was to be approved. - **DOOSAN INTERNATIONAL INDIA (P.) LTD. IN RE [2012] 112 SCL 363 (KARNATAKA)**

**2. OPPRESSION AND MISMANAGEMENT**

Petitioners had filed a Petition under sections 397 and 398 against appellant-company contending that they were having 29 per cent shares of company and company had undertaken fresh allotment of shares in contravention of Act. Petitioners were ready and willing to exit from appellant-company on reasonable and fair terms. During pendency of company Petition, Chairman of CLB passed a consent order dated 16.07.2009 by which a valuer was appointed to determine fair value of shares. Member of CLB by impugned interlocutory order held that settlement process had fully failed in matter and directed parties to present their case on merits on company Petition. Order dated 16.07.2009 was a consent order which was binding upon parties to lis unless it was challenged and interfered by Court. Effect of impugned order by directing parties to present their case on merits would be reviewing consent order passed by Chairman of CLB, which was not within domain of Member of CLB. Therefore, impugned order was to be set aside. - **MS. AARTI SPONGE & POWER V. BIMAL KUMAR [2012] 112 SCL 399 (CHATTISGARH)**

**3. MODIFICATION - WHEN CHARGE DOES NOT AMOUNT TO MODIFICATION - SECTION 135**

The charge has been created over the properties of the company in liquidation in respect of the principal

amount advanced as well as the interest accrued shown as a separate account called the funded interest account, there is no modification of the charge which is required to be registered with the Registrar of Companies in terms of section 135. - **A P STATE FINANCIAL CORPORATION V. GURUVAYURAPPAN SWAMY OILS, FOODS & FATS LTD. (IN LIQUIDATION) [2012] 106 CLA (SNR.) 10 (AP)**

**4. BOARD OF DIRECTORS AUTHORISING DIRECTOR TO INSTITUTE LEGAL PROCEEDINGS ON ITS BEHALF - CAN HE EXECUTE POWER OF ATTORNEY IN FAVOUR OF ANOTHER - SECTION 291**

The director, who has been authorised by the Board of Directors to institute legal proceedings on its behalf, has no further authority to execute the power of attorney in favour of sales manager to act on his behalf in legal proceedings since the power can only be given by the Board in exercise of its statutory power by passing the resolution under section 291 in favour of a directors. - **EIMCO ELECON (INDIA) LTD. V. MAHANADI COAL FIELDS LTD. [2012] 106 CLA (SNR) 11 (ORI)**

**5. POWER OF COMPANY LAW BOARD ('BOARD') TO ORDER MEETING TO BE CALLED IF IT IS IMPRACTICABLE TO CALL - DIRECTION CANNOT BE GIVEN BY BOARD FOR CALLING, HOLDING AND CONDUCTING MEETING UNDER SECTION 186 - SECTION 186 READ WITH REGULATION 44 OF COMPANY LAW BOARD REGULATIONS, 1991**

There is no pleading in a company Petition indicating any situation impracticable to call Extra Ordinary General Meeting by the Board of Directors, meeting was already called by the time Petition was moved before the Company Law Board ('Board') and the meeting had already been held by the time the Petitioner's counsel made his submissions before the Board, no direction could be given separately to any of the three situations, that is, calling, holding and conducting the meeting under section 186, even if it be presumed that impracticability for calling the meeting was subsisting. So no case could be found by the Bench to exercise its powers invoking section 186. - **PRADIP KUMAR GHATAK V. ASANSOL CLUB LTD. [2012] 106 CLA 245 (CLB)**



*"Everything has been said before, but since nobody listens we have to keep going back and beginning all over again." - Andre Gide*

# Top Stories

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## STATUTES

- Investment in Indian Co. by an NR by way of subscription to MoA shall be subject to FDI scheme - A.P. (DIR SERIES 2012-13) CIRCULAR NO. 36, DATED 26-9-2012
- Foreign entities to seek approval of RBI before establishing a LO, branch or project office in India - A. P. (DIR SERIES 2012-13) CIRCULAR NO. 31, DATED 17-9-2012
- Blanket approval of specified loans for lower rate of TDS, subject to 'all-in-cost ceilings' and other conditions - CIRCULAR NO. 7/2012 [F.NO. 142/17/2012-SO(TPL)], DATED 21-9-2012
- Format of accountant's report where provisions of alternative minimum tax are applicable to LLP - NOTIFICATION NO. 34/2012 [F.NO. 142/22/2012-SO(TPL)]/SO 1979 (E), DATED 28-8-2012
- Kelkar Committee Report recommends comprehensive review of Direct Taxes Code Bill, 2010 - PRESS RELEASE, DATED 3-9-2012
- Expert Committee Report on General Anti Avoidance Rules (GAAR) in Income-tax Act, 1961
- ST return to be filed by 25-10-2012 shall be for the period from 1-4-2012 to 30-6-2012 - NOTIFICATION NO. 47/2012 ST, DATED 28-9-2012
- Accountant's certificate format notified to get immunity for TDS default, if due taxes paid by payee - NOTIFICATION NO. 37/2012 [F.NO. 142/18/2012-SO(TPL)], DATED 12-9-2012

## CASE LAWS

- Criminal liability against an advocate can't arise if his association with other conspirators isn't proved - CENTRAL BUREAU OF INVESTIGATION, HYDERABAD v. K. NARAYANA RAO [2012] 25 taxmann.com 452 (SC)
- Sahara's guilty of raising crores from public through dubious private placement without complying with securities laws - SAHARA INDIA REAL ESTATE CORPN. LTD. v. SEBI [2012] 25 taxmann.com 18 (SC)
- CCI penalizes and directs the Chemists & Druggists Association of Baroda to desist anti-competitive practices - VEDANT BIO SCIENCES v. CHEMISTS & DRUGGISTS ASSOCIATION OF BARODA [2012] 25 taxmann.com 184 (CC)
- 'Silly mistakes' by an expert not a valid ground to levy penalty; SC drops concealment penalty against PWC-PRICE WATERHOUSE COOPERS (P.) LTD. v. CIT [2012] 25 taxmann.com 400 (SC)
- Amendment to sec. 92C by Finance Act, 2012 makes it clear that 5% tolerance band isn't statutory deduction - BAYER CROPSOURCE LTD. v. ADDL. CIT [2012] 25 taxmann.com 575 (MUM. - ITAT)
- Satellite charges not taxable as 'royalty' as it's impossible to comply with retro amendment of FA, 2012 - CHANNEL GUIDE INDIA LTD. v. ASSTT. CIT [2012] 25 taxmann.com 25 (MUM. - ITAT)
- Assessee can't withdraw an appeal filed with CIT(A) even if revenue has no objection to such withdrawal - M. LOGANATHAN v. ITO [2012] 25 taxmann.com 174 (MAD.)

- eBay isn't liable to tax on income from India specific websites; Group concerns though dependent agents but not PE - eBAY INTERNATIONAL AG v. ASSTT. CIT [2012] 25 taxmann.com 500 (MUM. - ITAT)
- Acquisition of perpetual tenancy right isn't eligible for sec. 54 deduction, if rent payable isn't 'peppercorn rent' - Yogesh Sunderlal SHAH v. ASSTT. CIT [2012] 25 taxmann.com 300 (MUM. - ITAT)
- Explanation 4 inserted in the definition of royalty by FA, 2012 immaterial for disallowance under sec. 40(a)(ia) - SONATA INFORMATION TECHNOLOGY LTD. v. DY CIT [2012] 25 taxmann.com 125 (MUM. - ITAT)
- MAT doesn't include surcharge and education cess; accordingly credit for same isn't allowed - RICHA GLOBAL EXPORTS (P.) LTD. v. ASSTT. CIT [2012] 25 taxmann.com 1 (DELHI - ITAT)
- Location saving accrues to industry as a whole; TP adjustment for same is uncalled for - GAP INTERNATIONAL SOURCING (INDIA) (P.) LTD. v. ASSTT. CIT [2012] 25 taxmann.com 414 (DELHI - ITAT)
- No sec. 68 addition for deposits from untraceable customers if bank already complied with KYC norms - CITIZEN CO-OP. SOCIETY LTD. v. ADDL. CIT [2012] 24 taxmann.com 347 (HYD. - ITAT)
- SetCom shouldn't admit application of time-barred assessment as the same can't be construed as pending - CIT v. INCOME-TAX SETTLEMENT COMMISSION [2012] 25 taxmann.com 551 (GUJ.)
- Revenue can't take advantage of assessee's mistake; has to grant statutory benefit even if not claimed in return - SANCHIT SOFTWARE AND SOLUTIONS (P.) LTD. v. CIT [2012] 25 taxmann.com 123 (BOM.)
- Depreciation to be allowed on leasehold property when 'transaction of sale' is disguised as 'lease transaction' - MATHER & PLATT (I.) LTD. v. CIT [2012] 25 taxmann.com 505 (BOM.)
- Special audit isn't meant for delegation of AO's power to auditor; large No. of entries don't prove complexities - DELHI DEVELOPMENT AUTHORITY v. UNION OF INDIA [2012] 25 taxmann.com 234 (DELHI)
- Delhi HC comes to rescue hapless deductee denied credit of tax reflected in Form 26AS - COURT ON ITS OWN MOTION v. CIT [2012] 25 taxmann.com 131 (DELHI)
- NPA norms of RBI are not binding on tax authorities to allow deduction in respect of provision for bad debts - HAMIRPUR DISTRICT CO-OPERATIVE BANK LTD. v. DY CIT [2012] 25 taxmann.com 306 (LUCKNOW - ITAT)
- Refusal to issue tax deduction certificate is not valid merely because proceedings are going on for TDS default - SERCO BPO (P.) LTD. v. ASSTT. CIT [2012] 25 taxmann.com 4 (PUNJ. & HAR.)
- Contractors can't escape service tax liability by getting work done by sub-contractors - H.P. STATE ELECTRONICS DEVELOPMENT CORPORATION LTD. v. CCE [2012] 25 taxmann.com 185 (NEW DELHI - CESTAT)

# CIRCULARS AND NOTIFICATIONS

*CS Piyush Bindal, Practising Company Secretary, Bhopal*

## MINISTRY OF CORPORATE AFFAIRS

### 1. **CONDITION TO BE IMPOSED FOR CONVERSION OF ORDINARY SOCIETY INTO PRODUCER COMPANY, PART-IX A OF THE COMPANIES ACT, 1956.**

*General Circular No. 29/2012*

*Source: www.mca.gov.in*

The question of the acceptance of documents by the Registrar of Companies for Conversion of a Co-operative Society (not registered as the Multi State Society) under section 581 J(5) of the Companies Act has been examined by the Ministry. It is said that:

1. Consequent upon the receipt of such an application/form seeking conversion of Co-operative Society (society not registered as the Multi State Society) into a Producer Company, the ROCs will seek a written consent from the Local Co-operative Department of the concerned state certifying that the society desirous of being converted into Producer Company, under Part IX A of the of The Companies Act,1956 has no dues payable to the state at the time of such conversion and the Cooperative Department has 'no objection' to its being converted into a Producer Company under The Companies Act,1956 . Further the ROCs must satisfy themselves fully that the applicant society has indeed extended its activities outside the state where it is registered as a Cooperative Society under the local/state level law governing Cooperative Societies which are not inter-state Cooperative Societies.
2. In case of any doubt a reference may be made to the Ministry for further guidance before Incorporation under section 581 J(5)
3. This Circular shall be effective from the date of issue of circular.

### 2. **FILING OF BALANCE SHEET AND PROFIT AND LOSS ACCOUNT BY COMPANIES IN NON-XBRL FOR ACCOUNTING YEAR COMMENCING ON OR AFTER 01.04.2011.**

*General Circular No. 30/2012*

*Source: www.mca.gov.in*

This Ministry had issued General Circular No. 21/2012 dated 02.08.2012 and No. 28.2012 dated 03.09.2012 extending time for filing E-forms 23AC(non XBRL) & 23ACA (non XBRL) upto 15.10.2012 or within 30 days from the date of AGM, whichever is later. The revise e-forms 23AC (non XBRL) & 23ACA (non XBRL) have now been notified vide notification dated 24/09/2012 and shall come into effect from 30/09/2012.

In order to ensure smooth filing and to avoid last minute rush, it is to inform you that with the approval of the competent authority, the due date of filing of e-forms 23AC (non XBRL) & 23ACA (non XBRL) as per new schedule VI is now further extended in following

manner without any additional fees:-

- a) Company holding AGM or whose due date for holding AGM is on or before 20.09.2012, the time limit will be 03.11.2012 or due date of filing, whichever is later.
  - b) Company holding AGM or whose due date for holding AGM is on or after 21.09.2012, the time limit will be 22.11.2012 or due date of filing, whichever is later
3. **FILING OF FORM 23B BY STATUTORY AUDITOR FOR THE ACCOUNTING YEAR 2012-13.**

*General Circular No. 31/2012*

*Source: www.mca.gov.in*

This Ministry had issued Circular No. 14 of 2012 and No. 28.2012 whereby the fee was imposed on filing of 23B as per schedule X of the Act. To ensure smooth filing of the forms e-forms 23AC (non XBRL) & 23ACA (non XBRL), with the approval of the competent authority, the filing of e-form 23B is extended without any additional fees till 23.12.2012 or due date of filing whichever is later.

## CUSTOMS

### 1. **GRANT OF EXEMPTION FROM FURNISHING SECURITY/BANK GUARANTEE BY CENTRAL/ STATE GOVERNMENT UNDERTAKINGS FOR STORING SENSITIVE GOODS IN PRIVATE BONDED WAREHOUSES - REGARDING.**

*Circular No. 26/2012-Customs*

*Source: www.cbec.gov.in*

With reference to Circular No. 99/95-Customs dated September 20, 1995 (issued from file F. No. 473/61/94-LC) laying down the procedure for licensing of Private Bonded Warehouses under Section 58 of the Customs Act, 1962. Paragraph 3 (viii) of the Circular stipulates inter alia, that "In respect of individual consignments to be warehoused, the licensees are to give a double duty bond as required under the law. In respect of sensitive goods we may take cash deposit or bank guarantee equal to 25% of the duty liability (effective duty foregone) for each consignments". In this connection, a reference has been received from M/s. India Tourism Development Corporation Limited, a Government of India Undertaking, seeking exemption from furnishing Bank guarantee for storing sensitive goods in duty free shops operated by them.

1. The matter has been examined in the Board. As a measure of relaxation to the Central/State Government Undertakings, as has been done in case of relaxation of requirement of Bank guarantee/security for Custodians of Sea Ports and Air Cargo Complexes/ICDs/CFSs (Circular No. 34/02-Customs dated June 26, 2002 and Circular No. 13/02-Customs dated February 22, 2002 refers), it is clarified that all Central and State Public Sector Undertakings shall be exempt from furnishing Bank guarantee or other form of security for storing

sensitive goods in the duty free shops operated by them. The execution of a double duty bond and other requirements stipulated under Circular No. 99/95-Customs dated September 20, 1995 would, however, remain.

2. Publicity to this Circular may be given by way of issuance of public notice and standing order.
3. Difficulties, if any, faced in the implementation of this circular, may be immediately brought to the notice of the Board

## 2. ALL INDUSTRY RATES OF DUTY DRAWBACK 2012-13-REGARDING.

*Circular No. 27/2012-Customs*

*Source: www.cbec.gov.in*

The Ministry has notified the All Industry Rates (AIR) of Duty Drawback 2012-13 vide Notification No. 92 / 2012- Customs (N.T.), dated 4.10.2012. The notification shall come into force on 10th October, 2012.

1. As in previous years, the drawback rates have been determined on the basis of certain broad parameters including, inter alia, prevailing prices of inputs, Standard Input Output Norms, share of imports in the total consumption of inputs, FOB value of export goods, the applied rates of central excise and customs duties, the factoring of incidence of service tax paid on taxable services which are used as input services in the manufacturing or processing of export goods, factoring incidence of duty on HSD/ Furnace Oil.
2. Some of the broad aspects, from amongst the changes notified with respect to AIR of duty drawback and entries in the Schedule, are -
  - (a) Most, but not all, of the items that were already covered under the duty drawback schedule prior to 1.10.2011 [that is, before last year's (2011-12) duty drawback schedule was issued] will see an increase from the existing AIR. Some of the items that will see a reduction in AIR include leather trunks and handbags, wool yarn and fabric, gaskets (84.84), lawn tennis balls, cricket balls, felt tipped/porous tipped pens and markers, goods of heading 90.02 to 90.05.
  - (b) In continuation of a transitory arrangement, most of the items incorporated in last year's (2011-12) duty drawback schedule, from the erstwhile DEPB scheme, will see a reduction in the AIR rates.
  - (c) The existing residuary rate of 1% ad valorem (all customs) will now be either 1% composite rate with 0.3% customs component, or it will see an increase to 1.5% (customs component) or 2% (customs component).
  - (d) With certain exceptions, the drawback caps have not been assigned where the higher of the composite rate/customs component of the rate is 3.5% or lower. Where the AIR will be above 3.5%, not every entry has been assigned the drawback caps. Where drawback caps have been assigned, these will by and large see a relative increase.

(e) In certain cases separate tariff entries have been created, as for calcined bauxite, silicon dioxide, gauze swabs, dairies with leather covers, leather insoles, sarees with or without blouse piece under chapters 50, 52 and 54, women's/girl's blouses with tightening at the bottom, footwear with TPR/PU soles and canvas uppers, worked human hair, imitation jewellery made up of iron, motor cars with manual transmission, motor cars with automatic transmission, multi-speed bicycles etc. Under heading 3004 (medicaments), dosage and pack-size specifications for many items have been removed. Composite rates have been assigned in a few cases such as under heading 7321, 7415 and 8535. The unit for the drawback cap has been changed from litre to kilogram for printing inks of heading 3215.

(f) Drawback has been restored for export of Guar Gum (Tariff Item No. 130201) by providing a specific composite rate with a specific customs component.

(g) In order to continue with the existing classification of sports gloves under the drawback schedule, an appropriate exception, to the principle of alignment at four digit level with the First Schedule to the Customs Tariff Act, 1975, has been specified in the Notes and Conditions in the Notification.

3. It is requested to download the notification with the Schedule for 2012-13 from Board's website (www.cbec.gov.in) and carefully peruse it and thereby take note of all the specific changes notified. As before, it may be ensured that exporters do not avail of the refund of service tax paid on taxable services which are used as input services in the manufacturing or processing of export goods through any other mechanism while claiming AIR. Since the changes include specification of composite rates in many cases, it needs recalling that the composite rate (when Cenvat facility has not been availed) is not available, inter alia, when rebate of central excise duty on inputs is availed or inputs are procured without payment of central excise duty, under rule 18 or 19 (2) of Central Excise Rules 2002, respectively. The due diligence is also expected to be exercised to prevent any misuse, inter alia, in the light of not all items having drawback caps and the assigned drawback caps seeing a relative increase.
4. While every effort has been made to avoid errors / omissions, these are not ruled out. If an error is noticed, please immediately inform the Board for appropriate corrective action. Difficulties faced, if any, in implementation of the changes may also be brought to Board's notice. Suitable public notice and standing order may be issued for guidance of the trade and officers. Receipt of this Circular may be acknowledged. ■■■

*"Experience - the wisdom that enables us to recognise in an undesirable old acquaintance the folly that we have already embraced." - Ambrose Bierce*

# COUNTING DAYS PRESCRIBED BY A STATUTE

Dr K R Chandratre, Practising Company Secretary, Pune

## Case for Opinion

X Ltd is a listed company. The date of Annual General Meeting (AGM) of X Ltd was Thursday, September 27, 2012 at which a dividend on equity shares was declared. The Company deposited the total amount of dividend in a separate bank account on October 5, 2012 as the banks were not working on three days on account of Sunday, half-yearly closing and a national holiday, although pursuant to provisions of section 205(1A) of the Companies Act, 1956 ('the Companies Act') the Company was required to deposit the amount of dividend in a separate bank account within five days from the date of declaration of such dividend that is, October 2, 2012. Did the Company committed breach of the statutory mandate under the Companies Act.

## Discussion and Answer

According to section 205(1A), the amount of any dividend shall be deposited in a separate bank account "within five days from the date of declaration of such dividend". This provision applies to both final dividend and interim dividend and the word 'declaration' although not appropriate in the interim dividend must be taken to mean the decision or approval by the Board for the payment of interim dividend. Therefore the period of five days is to be counted (in the case of final dividend) from the date of the annual general meeting at which the dividend is declared and (in the case of interim dividend) from the date of the aboard meeting at which the board approves interim dividend.

The expression "within five days from the date of declaration of such dividend" indicates that the money representing the amount of dividend must be deposited within five days from the date of the annual general meeting.

The first question is how to count five days, whether both the day of the AGM and the day of fifth day are to be counted or whether the first day is to be excluded or whether the last day is to be excluded or both the first and the last days are to be excluded.

It is a settled principle concerning counting of a period expressed in a statutory provision in terms of days, that when a statutory provision or a document states a certain thing to be done within a particular number of days from/of/after the happening of a stated event, one of the first

and the last days is to be ignored unless 'day' is specifically defined in the provision defined which requires both the days to be counted or ignored. The provision in section 205(1A) does not define 'day' and therefore the general rule regarding counting of days would apply. The Companies Act also does not contain any provision regarding counting of days or computation of time.

Section 9 of the General Clauses Act, 1897 reads as follows:

### "Commencement and termination of time- (1)

In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any other period of time, to use the word "to".

According to this section, the use of the word "from" in a statutory provision indicates that in computing the period stated in such a provision, the first day in a series of days or any other period of time is to be excluded. In computing five days under section 205(1A), the day of the annual general meeting at which the dividend will be declared, will be excluded. So, in the present case, if the annual general meeting of the Company resolved on September 27, 2012 to declare a dividend, the five days would be counted after excluding the first day and therefore the dividend amount should be deposited on or before 2 October 2012.

The next question is whether the three days on which the bank was closed can be excluded so that the five day period got extended by three days and ended on October 5, 2012. It may be recalled that out of days, the banks were not working on three days on account of Sunday, half yearly closing and a national holiday and hence whether the Company can deposit the dividend amount on 5 October 2012.

To answer this question, we need to refer to section 10 of the General Clauses Act, 1897, reads as follows:

"**Computation of time-** (1) Where, by any Central Act or Regulation made after the commencement of this Act, any act or proceeding directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done



*"Some persons are very decisive when it comes to avoiding decisions." - Brendan Francis*

or taken on the next day afterwards on which the Court or office is open;

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877 (15 of 1877) applies.

(2) This section applies also to all Central Acts and Regulations made on or after the fourteenth day of January, 1887."

In section 10, the expression "on the next day afterwards on which the Court or office is open" does not seem to mean on the next succeeding day even though that day is a holiday. The word 'afterwards' means at a later or subsequent time; subsequently. Accordingly, "the next day afterwards on which the Court or office is open" would mean any subsequent first day (after the holiday) on which the court or office is open.

This section applies to any act or proceeding directed or allowed to be done or taken in any Court or office. The words "Court or office" are two distinct things and the word "office" is not defined and it should therefore be taken in its ordinary meaning. Hence, even a bank is an "office". Accordingly the three days in the five-day period, on which the banks are going to remain closed will get added to the five-day period. Let us now take note some court decisions on this point.

In *Harinder Singh v S Karnail Singh* AIR 1957 SC 271, the Supreme Court has held that the object of section 10 is to enable a person to do what he could have done on a holiday, on the next working day. Where, therefore, a period is prescribed for the performance of and that period expires on a holiday, then, according to this section, the act should be considered to have been done within that period, if it is on the next day on which the court or the office is open. For that section to apply, therefore, all that is requisite is that there should be a period prescribed, and that period should expire on a holiday.

In one case, where the appellant had submitted his application along with educational qualification on the last date (14.04.2003) and medical certificate was submitted on



15.04.2003, the Supreme Court held that there was no delay in making the application in view of section 10 of the General Clauses Act as 11th April was a gazetted holiday on account of Ramnavami, 12th April was closed for second Saturday, 13th April was Sunday and 14th April was holiday on account of Ambedkar Jayanti and as such from 11th April to 14th April 2003, the appellant could not get the medical certificate. He got the medical certificate on 15.04.2003 and submitted the same on 15.04.2003 itself. [see *Mohd. Ayub v State of U. P.* (2009) 17 SCC 70; 2010 AIR SCW 103]

Section 34(3) of the Arbitration and Conciliation Act 1996 provides that an application for setting aside an arbitral award may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award. Where a copy of an arbitration award was received on 10.11.2007 which was a holiday (Saturday) and the following day was also a holiday (Sunday), the Supreme Court held that 12.11.2007 (Monday) which was the next working day should be taken as the date of receipt of the award. [*State of Himachal Pradesh v Himachal Techno Engineers* 2010 AIR SCW 5088]

In the light of the foregoing discussion, the answer to the question posed in the case is as under:

**As the banks will not be working for three days out of the five days, the Company could deposit the dividend amount on October 5, 2012 and the Company's action was not in violation of section 205(1A).** ■■■

### CS Quiz

"A Limited Company had 4 directors. At one of its convened Board Meeting only two of them attended and they appointed 2 additional directors who were their relatives. Is the appointment of those additional directors valid?"

Amit Kumar Jain, Editor  
ICSI-WIRC's FOCUS

WIRC Premises No.13, 56 & 57, Jolly Maker Chambers No.2, First Floor, Nariman Point, Mumbai - 400 021.

### WINNER

CS, Gaurav Pingle, Company Secretary, Pune Winner of Quiz published in September issue of FOCUS

*"When one bases his life on principle, 99 percent of his decisions are already made." - Author Unknown*

## OVERVIEW AND COMPARISON OF REVISED E-FORMS 23AC AND 23ACA

### Introduced by Ministry of Corporate Affairs for Non XBRL Companies

**CS Kaushik M. Jhaveri, Practising Company Secretary**

The Companies Act, 1956 stipulates that every Company registered under the Act, shall prepare its Balance Sheet, Statement of Profit and Loss and notes thereto in accordance with the manner prescribed in Schedule VI to the Companies Act, 1956. To harmonize the disclosure requirements with the Accounting Standards and to converge with the new reforms, the Ministry of Corporate Affairs vide Notification No. S. O. 447 (E), dated 28<sup>th</sup> February, 2011 replaced the existing Schedule VI of the Companies Act, 1956 with revised one. Government vide Notification No. F.N. 2/6/208- C.L-V dated 30<sup>th</sup> March, 2011 made the revised Schedule VI applicable to all companies for the financial year commencing from 1<sup>st</sup> April, 2011.

Hence, the Ministry of Corporate Affairs vide notification dt. 21<sup>st</sup> September, 2012 introduced revised e-forms 23AC and 23ACA as per revised Schedule VI which are applicable for the financial year commencing on or after 1.4.2011. The revised e-forms 23AC and 23ACA were made available on the MCA Portal from 30<sup>th</sup> September, 2012.

The newly introduced e-forms are quite elaborative in nature and more disclosures are required. In the revised e-forms 23AC & 23ACA, the provision was made for filing the pending Annual Reports of such Company, whose financial year had commenced before 1.4.2011.

**The selective changes in newly introduced e-forms 23AC and ACA are highlighted below:**

#### A) Highlights of e-form 23AC: (Related to Balance sheet)

Sr. No.	Page No. of revised e-form 23AC	Revision in e-form 23AC	Previous e-form 23AC
1.	-	Number of pages extended to Eleven	Earlier Number of pages were only Six
2.	Pg. no. 4	Category of auditors whether individual or firm is required to be mentioned. In case of firm, name and membership number of member representing the firm is to be mentioned.	No such category was provided
3.	Pg. no. 5	Details of Money received against share warrants needs to be filled up	No such details was required
4.	Pg. no. 5	Details of Non Current Liabilities is to be provided under following heads: 1. Long term borrowings 2. Deferred tax liabilities. 3. Other long term liabilities 4. Long Term provisions	Break up of Secured Loan and Unsecured Loan was required
5.	Pg. no.5	Details of Current Liabilities : 1. Short term borrowings 2. Trade Payables 3. Other Current Liabilities 4. Short term provisions	The details of Current Liabilities and Provision were shown under the heading of Application of Funds.
6.	Pg. no. 5	Details of Assets divided as Non Current Assets and Current Assets	No such bifurcation was required
7.	Pg. no. 5	Details of Fixed Assets is to be provided under the following heads: i. Tangible asset ii. Intangible asset iii. Capital work in progress iv. Intangible asset under development	Separate details of Intangible assets and Intangible asset under development was not required
8.	Pg. no.5	Non - current Investment is to be shown separately, while current investment is to be mentioned in current asset.	No such bifurcation was required
9.	Pg. no. 6	Long term loans and advances and Other non-current assets to be mentioned	No such bifurcation was required

Sr. No.	Page No. of revised e-form 23AC	Revision in e-form 23AC	Previous e-form 23AC
10.	Pg. no. 7 & 8	Details of following schedules of balance sheet is to be provided separately: 1. Long Term Borrowing (unsecured) 2. Short Term Borrowing (unsecured) 3. Long Term Loans and advances (unsecured, considered good) 4. Long Term loans and advances (doubtful) 5. Trade receivables	Earlier it was not required to provide the details of schedules of Balance Sheet
11.	Pg. no. 8 & 9	Total number of Financial Parameters are extended to 45	Earlier financial parameters were only 15
12.	Pg. 9	Details of Share Capital Raised during the reporting period: 1. Private placement arising out of conversion of debentures/ preference shares & other private placement 2. Preferential allotment arising out of conversion of debentures / preference shares and Other preferential allotment 3. Employee Stock Option Plan (ESOP)	Earlier there was no such bifurcation was required for following: 1. Private Placement 2. Preferential allotment 3. ESOP details was not required
13.	Pg. no. 10	Details w.r.t Companies (Auditor's Report) Order, 2003 (CARO) is required to be provided	No such details were required to be provided.
14.	Pg. no. 11	Details related to cost audit of principal products or activity groups under cost audit is to be filled up	No such details were required to be provided.

**B) Highlights of Form 23ACA: (Related to Profit & Loss)**

Sr. No.	Page No. of revised e-form 23ACA	Revision in e-form 23ACA	Previous e-form 23ACA
1.	-	Now Number pages extended to Six	Earlier Number of pages were only Four
2.	Pg. no. 2 & 3	Details of consumption of stores & spare parts now shifted into Financial Parameters. Following other details to be provided: i. Profit before exceptional and extraordinary items and tax ii. Details of exceptional items iii. Extraordinary items iv. current and deferred tax profit/loss from continuing / discontinuing operations	No such details were required to be provided
3.	Pg. no. 5	Details of Schedule of earning in Foreign Exchange and expenditure is to be provided	Only amount of earning of foreign exchange and expenditure was to be provided
4.	Pg. no. 5	Details of Principal products or services of the company. The list of ITC/ NPCS code is provided on the MCA website	Earlier no such list was provided

**Due date filing of revised e-forms 23AC & 23ACA for the financial year ended 31.3.2012:**

Sr. No.	e-Forms	Section	Date of AGM	Due date of filing
1.	Form 23AC & 23ACA	u/s 220	For AGM held on or before 20 <sup>th</sup> September, 2012	3 <sup>rd</sup> November, 2012 or due date of filing, whichever is later
			For AGM held on or after 21 <sup>st</sup> September, 2012	22 <sup>nd</sup> November, 2012 or due date of filing whichever is later

As Professionals, while attesting the e-forms 23AC & 23ACA, we need to ensure the correctness and authenticity of content of the e-forms, as expected by Ministry of Corporate Affairs. ■■■

*"Life is the sum of all your choices." - Albert Camus*

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- d) The member has to enter his password in the box provided (The member has to Click on Reset password if creating for the first time and follow the instructions)
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- f) The member has to click on Download link to download the Form 'A' i.e. Form for admission as a Member of CSBF.
- g) The member has to fill up the form complete in all respects.
- h) The member has to scan the duly filled in form and upload the same.
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- j) A copy of the Acknowledgement Number generated may be retained by the member for future reference.

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For further information/clarification please contact Mrs. Meenakshi Gupta, Joint Director or Mr. J S N Murthy, Administrative Officer on telephone No. 011-45341049, Mobile No. 9868128682 or through e-mail [member@icsi.edu](mailto:member@icsi.edu) or [csbf@icsi.edu](mailto:csbf@icsi.edu)

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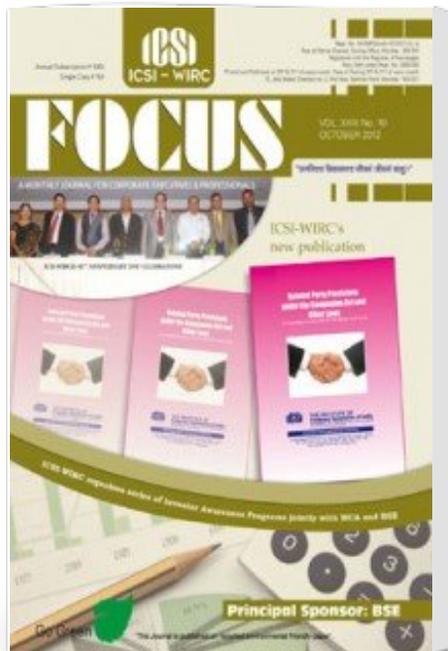
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