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FRANCHISEES INVITED FOR ACROSS THE INDIA

New President and Vice President of the Council of the Institute of Company Secretaries of India (ICSI) for 2013



CS S. N. Ananthasubramanian, a Fellow Member of the Institute has been elected as PRESIDENT of the Council of the Institute of Company Secretaries of India (ICSI) w.e.f 19th January 2013.

CS S. N. Ananthasubramanian has been elected as the PRESIDENT of the Council of the Institute of Company Secretaries of India (ICSI) w.e.f. 19th January, 2013. He was the Vice-President of ICSI in 2012.

A member of the Council of ICSI since 2007, he was re-elected in 2010 for the term 2011-2014. Shri Ananthasubramanian, B.Com (Hons), FCS has been in practice as a Company Secretary at Thane since 1991, having been in employment from 1976.

CS Ananthasubramanian has contributed to the visibility and growth of the profession as member of ICSI-WIRC between 2001 and 2006. As its Chairman in 2005, he was actively associated in ICSI-NSE Collaboration towards the inclusion of Corporate Governance Module in National Certificate in Financial Markets (NCFM) and as its Secretary, facilitated the formation of Thane Chapter of ICSI in 2003.

It was primarily due to the initiatives taken by CS Ananthasubramanian that the RBI introduced in 2008, Diligence Report to be obtained by Banks in respect of multiple-banking arrangements from professionals preferably, Practicing Company Secretaries. He has been actively associated with formulation of Compliance Certificate for companies seeking listing on the SME platform of BSE and NSE; introduction of Networth Certificate by PCS in respect of broking firms by BSE and NSE; formulation of IPO/FPO Certification; tie-ups with IIM, Indore, Indian Institute of Banking and Finance (IIBF) and Insurance Institute of India (III), Mumbai.

He was a member of various Committees of the Council of the ICSI including the Core Group for formulating the ICSI-Vision 2020. As Chairman, Management Committee of ICSI-Centre for Corporate Governance, Research & Training, Navi Mumbai between 2007-09, he successfully spearheaded the turnaround of the ICSI-CCGRT and its activities.

As member of Syllabus Review Committee and Board of Studies in 2007 and in 2011, he has contributed significantly in the development of contemporary syllabus for Company Secretaryship Course. He was the Chairman of the Task Force on Training in 2008 and in 2011 which has introduced the New Training Structure for students including the introduction of e-SIP, e-EDP, ICSI-Direct signifying online registration of students.

CS Ananthasubramanian also piloted the Guidelines for Advertisement by Company Secretary in Practice in 2007.

A strong votary of good governance practices, CS Ananthasubramanian anchored the Special Debate on Corporate Governance during the ICSI National Award for Excellence in Corporate Governance held in Mumbai in 2009. He has also attended the Training of Trainers programme organised by the Global Corporate Governance Forum, IFC, Washington. He is a regular speaker at Seminars, Workshops, Conferences, Shri Ananthasubramanian is also associated with public charitable institutions in Thane and Mumbai.



CS Harish K. Vaid also a Fellow Member of the Institute has been elected as the VICE PRESIDENT of the Council of the Institute of Company Secretaries of India w.e.f 19th January 2013.

CS Harish K. Vaid has been elected as the VICE-PRESIDENT of the Council of the Institute of Company Secretaries of India (ICSI) w.e.f 19th January 2013. He is a Fellow Member of The Institute of Company Secretaries of India, Life Member of Indian Law Institute, Member of All India Management Association and Fellow Member of the Institute of Administrative Management. Having served the Government of India for about 7 years, he is with Jaypee Group for the last 31 years and is presently Sr. President (Corporate Affairs) & Company Secretary of Jaiprakash Associates Limited, the flagship Company of the Jaypee Group.

CS Harish K. Vaid has been a Member of various Committees on Corporate Laws constituted by ASSOCHAM, Confederation of Indian Industries and PHD Chambers of Commerce & Industry. He is also on the board of various listed and unlisted companies.

With an illustrious good academic career backed by widely acclaimed acumen in his chosen field of professional pursuit, CS Harish K. Vaid has been taking keen and active interest in the activities of The Institute of Company Secretaries of India. He had been Chairman of the NIRC of the ICSI in the year 1987 and has been elected to the Central Council of the Institute for 6 terms, including the present term.

CS Harish K. Vaid is regular Honorary faculty Member of Professional Bodies / Investor Protection Fund set up by Ministry of Corporate Affairs and the MSOP sessions being conducted by the Institute, its Regional Councils & Chapters. CS Harish K. Vaid is widely travelled within India and abroad.

NEW TEAM of ICSI for 2013



CS MS SAHOO, an officer of the Indian Economic Service (IES) takes over as the **SECRETARY** of the Institute of Company Secretaries of India (ICSI) w.e.f 1st January 2013.

CS MS SAHOO, a Fellow Member of the Institute of Company Secretaries of India, and a M. Phil, M.A. (Economics), LL.B., FCS, PGDM has over three decades of rich work experience in self-employment, private sector, public sector, regulator and government in varied functional areas such as reforms, policy, regulations, research and analysis. Before joining the ICSI, he was an eminent legal practitioner in the field of securities laws. He was a Whole Time Member of the Securities and Exchange Board of India (SEBI) during 2008-11. Prior to this, he served as the Joint Secretary (non-functional), Director and Joint Director in the Ministry of Finance, as the Chief General Manager with SEBI, and as Economic Adviser with National Stock Exchange of India Limited (NSE). As an officer of Indian Economic Service (1985 batch), he served the Government of India for 22 years. He played a key role in designing of major reforms in securities market, including dematerialization of securities, trading of derivatives, corporatisation and demutualization of exchanges, building regulatory and market infrastructural institutions, enforcement process / actions. He was instrumental in development of human resource capacity in securities markets through various interventions such as NSE's Certification in Financial Markets (NCFM), National Institute of Securities Markets (NISM) and a number of reputed publications. He has served / serves as a member on several expert committees / boards and professional groups. He has delivered talks at various national and international fora and written over 100 articles.



CS Sutanu Sinha has taken over as the **CHIEF EXECUTIVE** of the Institute of Company Secretaries of India (ICSI) w.e.f 1st January 2013

CS Sutanu Sinha is a Fellow Member of the Institute of Company Secretaries of India and also a Member of the Institute of Chartered Secretaries and Administrators, London (UK). A Post Graduate in Commerce from the Calcutta University, he stood First Class First in the Post Graduate Diploma in German Examination of the Calcutta University.

Before assuming the office of **CHIEF EXECUTIVE** from 1st January, 2013, Mr. Sinha was heading the **Academics & Professional Development** Directorate of the Institute of Company Secretaries of India (ICSI) and was appointed as Chief Executive Designate from 31st August, 2012 to 31st December, 2012 by the Council of the ICSI.

He has over twenty five years of professional experience in the Company Secretarial and Corporate Functioning. He possesses a vast work experience in Corporate Planning, Finance, International Trade and other allied areas in the course of his previous assignments in MNC/PSUs. An avid reader and a corporate analyst, Mr. Sinha has contributed several important papers and articles on different aspects of Governance and Management and addressed various Workshops, Seminars and Conferences, both in India and abroad.

His areas of specialization include Corporate Governance, Sustainability and Enterprise Resource Planning. He is also Global Corporate Governance Forum (GCGF), Washington (World Bank Group) trained Trainer for Directors Development Programmes. He has contributed significantly in Institute's initiatives to promote corporate governance in India and overseas.

He has been appointed by the Government of India as Director in the Board of Canara Bank, which is one of the leading Public Sector Banks of the Country. Fluent in many foreign languages, his hobby traverses from instrumental music, painting, photography to Documentary Film-making.

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NEW TEAM of ICSI - WIRC



CS Hitesh D. Buch, Chairman

CS Hitesh D. Buch, is a Graduate in Management (B.B.A.) and Law (Special), and Fellow Member of the ICSI having overall experience of more than 30 years. He possesses more than 23 years post qualification experience as Company Secretary. He started his career with Reserve Bank of India in 1983 and switched to the profession in 1989 on acquiring the membership of the ICSI. After working in industry for about five years, he joined the practicing side of the profession in 1995. He possesses wide spectrum exposure and rich experience in all the spheres of corporate secretarial and legal matters, including appearance before CLB, SAT, SEBI and Consumer Courts.

He has been contributing as an active member since last about 20 years to the activities of the ICSI at Chapter and Regional level. He is a regular faculty for programs and training sessions conducted by ICSI – Ahmedabad Chapter. He has held membership and chairmanship of various Committees at ICSI -Ahmedabad Chapter and WIRC.

He held the Chairmanship of ICSI-Ahmedabad Chapter in 1996. He was also elected to WIRC for 2004-2006, and again for the 2011-14. He was elected as Vice-Chairman of the ICSI - WIRC for 2012. He assumed the office of Chairman of ICSI-WIRC on 19th January 2013.



Ragini Chokshi, Vice Chairperson

CS Ragini Chokshi, she is a founder partner of the firm Ragini Chokshi & Co. Practicing Company Secretaries in Mumbai. The firm has specialization in corporate laws, listing, merger & amalgamation, managerial remuneration, organization restructuring, conversion of balance sheet & profit & loss a/c into XBRL & corporate legal counseling to companies & appearance before company law board, regional director, ministry of corporate affairs, SAT, SEBI, etc. The firm is associated with listed and unlisted companies. The firm has an in-depth knowledge of corporate governance, compliance certificate related aspects, secretarial audit, due diligence matters, listing and re-listing of securities on stock exchange and other corporate law matters for domestic and international clients.



CS Ashish Garg, Secretary

CS Ashish Garg, is a Post Graduate in Economics and Commerce and Graduate in Law from the Vikram University, Ujjain and a Fellow Member of the Institute of the Company Secretaries of India. He is a member of the Western India Regional Council of The ICSI for 2007 to 2010 and again re-elected for 2011-2014. Presently He is elected as the Secretary of WIRC for 2013. Earlier he was the Chairman of Information Technology Committee of the WIRC in 2007 and part in recommendation and implementation of IT Policy in New Look - WIRC and Editor of monthly journal FOCUS of WIRC in 2008 and 2009 and commenced the circulation of Focus into an Electronic Newsletter and Chairman of Practicing Company Secretary Committee of WIRC for 2011 and in 2012 he was Treasurer of WIRC. He was the Secretary and Vice Chairman of Indore Chapter of the ICSI in 2004 and 2005.

He is Practicing Company Secretary at Indore since more then last one decade and having specialization in corporate laws, organizational restructuring and corporate legal counseling to companies and appearances before Company Law Board, Regional Director, Ministry Corporate Affairs.

Mr. Ashish Garg is highly concerned about Profession and he actively participates in the activities of the Institute. He is a visionary, good organizer and a friendly gentleman. He has been the visiting faculty at various Management Institutes of Indore for MBA and other Professional courses and delivered lectures regularly as invited speaker in the conference of Company Secretaries and Chartered Accountants.

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NEW TEAM of ICSI - WIRC



CS Sanjay Gupta, Treasurer

CS Sanjay Gupta, CS, LLB, ICWA & M.Com with over 22 years post qualification experience in Corporate Secretarial, Legal, Compliances and Corporate Affairs in renowned Groups including ICICI, Reliance, KK Birla, Jaypee & DCM-Shriram.

First Source Solutions Ltd. (Formerly ICICI one Source Ltd.), Since January 2007

An elected Council member of Western India Regional Council of the Institute of Company Secretaries of India (WIRC of ICSI) for its present term of 4 years i.e. 2011-2014. Presently holding the office of Treasurer of WIRC of ICSI. Held the office of Chairman of Professional Development Committee of WIRC of ICSI for 2011 and 2012, with responsibility of conducting of Seminars, Conferences in entire Western Region. Also held the office of Chairman of Accounts and Finance Committee of WIRC of ICSI in 2011.

OTHERS MEMBERS OF THE REGIONAL COUNCIL

CS Ashish C. Bhatt, Regional Council Member	CS Prakash K Pandya, Regional Council Member
CS Ashish C. Doshi, Regional Council Member	CS S.N. Ananthasubramanian, President ICSI
CS Amit Kumar Jain, Regional Council Member	CS Vikas Y. Khare, Central Council Member
CS Chandrashekhar S. Kelkar, Regional Council Member	CS Atul Mehta, Central Council Member
CS Hitesh Kothari, Regional Council Member	CS B. Narasimhan, Central Council Member
CS Makarand Lele, Regional Council Member	CS Umesh H. Ved, Central Council Member
CS Mahavir Lunawat, Regional Council Member	

COMMITTEES OF ICSI-WIRC FOR THE YEAR 2013

Committees	Chairman of Committee
Executive Committee	CS Hitesh Buch
Accounts & Finance Committee	CS Hitesh Buch
Fund Raising Committee	CS Hitesh Buch
Information Technology Committee	CS Ashish Bhatt
Library Committee	CS Amit Kumar Jain
Practicing Company Secretaries Committee	CS Ashish Doshi
Public Relations Committee	CS Amit Kumar Jain
Training & Educational Facilities Committee	CS Amit Kumar Jain
Professional Research and Publication Committee	CS Prakash Pandya
Placement Committee	CS Sanjay Gupta
Professional Development Committee	CS Prakash Pandya
Editorial Board of FOCUS	CS Makarand Lele
Renovation Committee	CS Mahavir Lunawat
Health, Sports and Culture Committee	CS Hitesh Kothari

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NEW TEAM of ICSI - WIRC



CS Makarand Lele, Editor Focus

CS Makarand Lele, a Fellow Company Secretary (FCS) and a member of Institute of Company Secretaries of India since 1993.

He has co-founded **MRM ASSOCIATES**, a firm of Company Secretaries in Pune in the year 2001 and **MRM Corporate Advisor Private Limited** in the year 2006.

He holds the Certificate of Practice of ICSI since 1994. He has gained proficiency in the fields of corporate laws, Foreign Exchange laws, Industrial laws, Corporate Compliance Management, Business set up services, Drafting, due diligence and Audits. He has a flare in Cyber Laws and Information Technology. He has handled varied assignments like mergers, restructuring, IPO, listing, formations, registrations, joint ventures. He is involved in providing total business solutions and is consulting to various Indian and International businesses on routine and critical matters. He advises to NGO & section 25 companies on registrations, business structuring and compliances.

He is active participant and contributor to the activities of **Institute of Company Secretaries of India (ICSI)** since 1994. He was a Chairman of the Pune Chapter for the year 2003, the year in which Chapter adjudged as **Best National Chapter** in India, exclusively for the first time. He has been elected for the second time to the **Western India Regional Council** of ICSI for the terms of 2010-14. He was a **Chairman of Western Regional Council** in the year 2011. He is also an ex-officio member of the managing committee of Pune Chapter.

ICSI – WIRC FOCUS TEAM 2013

CS Makarand Lele, Editor

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CS Yogesh Chande	Mumbai		
CS Hitesh Buch	Ex Officio		
CS Ashish Garg	Ex Officio		

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"Surround yourself with the best people you can find, delegate authority, and don't interfere as long as the policy you've decided upon is being carried out."

— Ronald Reagan

My Dear Professional Friends,

With the dawn of 2013, there is change of guards at various levels of our Institute. I am entrusted onerous task of heading the ICSI-WIRC; and I am aware that with support, co-operation and contribution, from each of you, I will be able to do justice to my job. The footprints left by my predecessors will guide me to scale new heights. I welcome suggestions and ideas from all of you as I believe in "Inclusive Participation".

I am extremely delighted that my term as Chairman, ICSI-WIRC coincides with the term of Mr. S. N. Ananthasubramanian, who has taken over as the President of our esteemed Institute. It is also a moment to rejoice, as it is after 22 years, that a member from Mumbai has been selected for the top position. Mr. S. N. Ananthasubramanian is a visionary with innovative ideas and will set the "TONE AT THE TOP". ICSI -WIRC will look forward to his support and co-operation, ideas and suggestions, guidance and advice during the year.

At the ICSI-WIRC, I have the continued support of CS Ragini Chokshi - Vice Chairperson, CS Ashish Garg - Secretary and CS Sanjay Gupta - Treasurer, and untiring efforts of other colleagues on the Regional Council. The members of various sub-committees constituted have been our strength and their contribution has remained and will remain inevitable for us at ICSI-WIRC. The list of the sub-committees will be printed in FOCUS.

Coming to the programs held till date of this communication, I have to inform that CS Prakash Pandya, Chairman-Professional Development Committee has started working rigorously to ensure that the programs are regularly conducted. A series of Professional Development programs are lined up which includes programs on Companies Bill, 2012, Personality Development & Communication, Appearance before various Authorities like CLB, NCLT, SAT etc. during the year.

I await your response and reaction and hope to convert this "Monologue" into Dialogue.

Thanks and Best Wishes.

Yours Cordially,

CS Hitesh Buch

7th Feb 2013 - Ahmedabad

Email: wiro@icsi.edu

APPEAL

Join Company Secretaries Benevolent Fund as Member - Think of your kin

Contribute to Fund Raising Initiatives of ICSI-WIRC - Any amount, any time

Join Professional Membership Scheme of ICSI-WIRC as Annual Member



Dear Readers,

“Read, every day, something no one else is reading. Think, every day, something no one else is thinking. Do, every day, something no one else would be silly enough to do. It is bad for the mind to be always part of unanimity.”

- Christopher Morley (1890 - 1957)

American journalist, novelist, essayist and poet.

I am extremely happy to reach to you through this editorial of “Focus”, a Newsletter of WIRC of ICSI.

Over the years “Focus” has established as a professional newsletter for quick reference and guidance among the readers.

Reading is a very good habit for any human being. We are attempting to spread the reading habits among our members by providing rich food for thought through “Focus”.

While we continue to have the traditional printed form of “Focus” (which I personally find very convenient for reading) we are also experimenting to have “Focus” in digital book form. The current “Focus” edition soon will be available on a portal as an eBook. The eBook facility will be free of cost to readers. They are just expected to do one-time registration to the portal. Additionally “Focus” is being uploaded on WIRC child portal (www.icsi.edu/wiro) under newsletter section for free PDF download.

This is a small step towards a global mission “Save Paper, Save Earth”

“Focus” is equipped with the rich team of “Editorial Advisory Board” consist of stalwarts of the profession. Additionally “Focus” has an “Editorial Team” to take care of activities of the “Focus” on continuous basis. The names of the “Team Focus” is printed elsewhere in this edition.

Our objective is to provide you the Fresh “Focus” every month.

I am sure you will continue to support this cause. We need your help for good articles, columns, suggestions, feedbacks, leads for advertisements and sponsorships. Please have a close look at Advertisement Tariff and scheme published in this edition.

If you have any suggestions, then please write to me.

Let’s spread the habit of reading & writing.

Thanks and Regards,

CS Makarand Lele

Editor “Focus”

WIRC 2013

makarand.lele@mrmcs.com

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Type	Size	Employment	Non Employment
Back Inner Cover Page	18 x 18	17,500	25,000
Full Page (Colour)	18 x 18	15,000	20,000
Half Page (Colour)	12 x 18	10,000	12,000
Half Page	12 x 18	8,000	10,000
Quarter Page	12 x 9	5,000	7,000
Strip at bottom of page	2 x 12	2,000	3,000

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Term of Payment : Advance payment in favour of 'WIRC of ICSI' by way of a Cheque / Demand Draft payable at Mumbai alongwith your release order / advertisement material.

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TRANSITION ISSUES AND FAREWELL



The transition of the service providers viz from TCS to Infosys has with respect to MCA-21 thrown up considerable issues for the stakeholders. There have been complaints of inability to login, inability to generate challan, inability to make payments and a host of other issues. The Ministry has now

come out with Circular No.03/2013 dt.08/02/2013 granting relaxation of additional fees and extension of last date in filing of various forms with Ministry of Corporate Affairs which ought to have been filed on or after 17/01/2013.

The following are the salient features of the aforesaid Circular dt. 08/02/2013.

“The following relaxation shall be considered by the Regional Director/Registrar of Companies on case to case basis while allowing for relaxation of fees or extension of last date with regard to forms to be filed by the stakeholders wherein:

- (i) Last date of filing for Forms where the due date is falling on or after 17th January, 2013 is without charging additional fee.
 - (ii) All the documents which have been expired on or after 17th January due to non-submission/re-submission PUCL may be restored back.
 - (iii) All the cases related to filing of Court orders/competent authority where the due date/date of filing was falling on or after 17th January is extended without payment of additional fees.
 - (iv) Name availability expired due to non-submission of incorporation documents will be made available for filing of the same.
 - (v) In case of charge documents the due date will be extended by Regional Director on case to case basis where the due date of filing was falling on or after 17/01/2013 and could not be filed.
 - (vi) The due date in above cases is hereby extended till 28/02/2013.
- 3) The Regional Director/Registrar of Companies will examine the request on case to case basis upon receipt of request from the stakeholders for allowing the relaxation without levying the additional fee.
 - 4) The process of extending date will be as under: -
 - a) Company/professional will make request by e-mail/post with RD/ROC along with the supporting documents, if any;
 - b) RC/ROC will raise ticket on service desk immediately after examining the application;

c) The team of operator will resolve the ticket as per the request of RD/ROC. A system generated mail will be sent to RD/ROC and user will be informed accordingly;

d) User should file the documents within the time given in the email.

5) The Regional Director/Registrar of Companies is authorized to allow such extension of time for filing form/along with necessary documents. The RD/ROC will raise ticket in the service desk for allowing such extension of time for filing forms.

6) The stakeholders who are able to file the documents on or after 17/01/2013 till the date of this circular are not eligible for any fees relaxation or extension of last dates. Further they are not entitled for any refund.”

As the process will require time and patience, the Companies/Professionals are advised to furnish the request along with supporting documents by hard copies also even if emails are forwarded. As far as ROC, Mumbai is concerned, the help desk set up in the ROC premises will be of help in co-coordinating the process. I am sure all stakeholders would co-operate as the process requires raising of ticket after examination of the application and resolving the issues raised in the ticket and thereafter user being required to file the documents within the time given in the email. This requires proper verification of their emails by the stakeholders. Ultimately, the process can be completed with the total co-operation of all concerned.

Incidentally, I am retiring on superannuation on 28/02/2013 after serving in the Ministry for nearly 4 decades. It has been a wonderful experience interacting with all of you. I am sure that the coming days would throw up lots of opportunities as a result of the new Companies Act which is likely to be enacted this year. I am sure all of you would utilize the future days to sharpen your skill, upgrade your knowledge and enhance your overall capacity to meet the huge opportunities and responsibilities that would come your way after the enactment of new Companies Bill.

I am signing off by wishing all you a very fruitful, enjoyable and productive professional career.

(S. M. AMEERUL MILLATH)
REGIONAL DIRECTOR, WR

CASE LAWS AT A GLANCE

RECENT JUDGEMENTS ON COMPANY LAW

CS Ajay Kumar, Practicing Company Secretary, Mumbai



1) ENFORCEMENT OF ORDERS OF ONE COURT BY OTHER COURTS

Procedure to be followed in matter of execution of order made by Company Court is different from that laid down in Code of Civil Procedure. As per section 635, it is sufficient to produce to executing Court which is required to execute order of Company Court, a certified copy of order sought to be executed and it is not necessary to comply with procedure laid down in section 39 and Order 21, rules 4 and 5 of Code of Civil Procedure and get order first transferred by Court which made it to Court which is to enforce it and then make an application to execute it - **SAMVIDHA CHIT FUNDS (P.) LTD. (IN LIQUIDATION) V. ADDITIONAL JUNIOR CIVIL JUDGE (AP) [2012] 114 SCL 385 (ANDHRA PRADESH)**

2) RECTIFICATION OF REGISTER ON TRANSFER OF SHARES

Petitioner filed a Petition under section 111A seeking directions against Respondent-Company for rectification of share register for disputed 200 shares of Respondent-company. Since issue had been already tried and adjudicated by Civil Court in a suit between same parties on same cause of action, Petition filed under section 111A was hit by principle of res judicata as Petitioner was re-agitating over self - same cause of action before CLB. Since matter being decided by a competent forum, Petitioner had no right to seek relief on self - same cause of action between same parties. Therefore, Petition was to be dismissed. **SMC SHARE BROKERS LTD V. ITC LTD. [2012] 114 SCL 246 (CLB-KOLKATA)**

3) COMPROMISE AND ARRANGEMENT

Company in question took a loan from Respondent Corporation. For said loan Managing Director of Company stood as a guarantor. Company faced financial constraints and for that reason a winding up order was passed by BIFR and an Official Liquidator was appointed. Subsequently, a Petition under section 391/394 was filed for revival of Company with a rehabilitation scheme. Scheme was approved by Court and debts of creditors including that of Corporation were settled. Corporation accepted settlement of its claim under such revival scheme. Corporation also invoked guarantee given by Managing Director asking for payment of rest of amount. Managing Director preferred instant Writ Petition pleading that it stood discharged under section 134 of Contract Act in view of act of Corporation in accepting settlement of its claim. Approval of revival scheme, by Company Court amounted to compounding with principal debtor

(Company) leading to discharge of surety (Managing Director) within meaning of sections 134 and 135 of Contract Act. Therefore, Writ Petition was to be allowed - **KUNDANMAL DABRIWALA V. HARYANA FINANCIAL CORPORATION [2012] 114 SCL 609 (PUNJAB AND HARYANA)**

4) SCHEME HAVING EFFECT OF EXTINGUISHING SMALL SHAREHOLDINGS AND RESULTING INTO 100 PER CENT SHAREHOLDING TO PARTICULAR GROUP - CAN SCHEME BE QUESTIONED AS IMPROPER PER SE- SECTION 391/394

Merely because the applicants are having small fractions of shares would not make them a separate class and they would remain the same category as other equity shareholders. Section 391 does not postulate different categories of shareholding within the same class. The arrangement which results in extinguishing some shares and results into 100 per cent shareholding in the hands of particular group cannot be treated improper per se - **INDRAMA INVESTMENT (P.) LTD. V. SELECT HOLIDAY RESORTS LTD. [2012] 109 CLA 356 (DEL.)**

5) INABILITY TO PAY DEBTS - DISPUTE BEING SUBSTANTIAL AND GENUINE - CAN IT BE RAISED BEFORE ISSUE OF STATUTORY NOTICE- SECTION 433 (E)

Dispute is substantive and genuine should be raised before issue of statutory notice and not one raise for the first time when the statutory notice is issued or in objection statement filed before the Court. In that perspective the case needs to be examined and the materials on record are to be appreciated without doing it in the nature of trial to determine the right of the parties, except to arrive at the prima facie opinion as to it needs determination elsewhere or as to it is so clinching and indisputable that the Petition is to be entertained - **D S NANDISH V. TECHNICOLOR INDIA (P.) LTD. [2012] 109 CLA (SNR.) 14 (KAR.)**

6) 'COMPANY' AS DEFINED IN SECTION 3 AND FOREIGN COMPANY REFERRED TO IN SECTION 591 - ARE THEY DISTINCT JURISTIC ENTITIES - SECTIONS 3 AND 591

The term 'Company' as defined in section 3 and the term 'Foreign Company' as referred to in section 591 are distinct juristic entities for purpose of the Act. The legal fiction created by sub-section (2) of section 591 does not confer on a Foreign Company any exalted status so as to be treated as a Company incorporated in India - **YASHDEEP TREXIM V. BOARD FOR INDUSTRIAL AND FINANCIAL RECONSTRUCTION [2012] 109 CLA (SNR.) 13 (CAL.)**



"The great blessings of mankind are within us, and within our reach; but we shut our eyes, and, like people in the dark, we fall foul upon the very thing we search for, without finding it" - Seneca

Circulars & Notification

CS Piyush Bindal, Practicing Company Secretary, Bhopal

MINISTRY OF CORPORATE AFFAIRS

1. FILING OF BALANCE SHEET AND PROFIT AND LOSS ACCOUNT IN EXTENSIBLE BUSINESS REPORTING LANGUAGE (XBRL) MODE FOR THE FINANCIAL YEAR COMMENCING ON OR AFTER 01.04.2011

General Circular No. 01/2013

Source: www.mca.gov.in

In continuation of General Circular No. 16/2012 dated 06.07.2012, 34/2012 dated 25.10.2012 and 39/2012 dated 12.12.2012 on the subject cited above, It is stated that time limit for file the financial statements in XBRL mode without any additional fee/penalty has been extended upto 15th February, 2013 or within 30 Days from the due date of AGM of the company, whichever is later.

2. All other terms and conditions of the General Circular No. 16/2012 dated 06.07.2012 will remain the same.

2. FILING OF COST AUDIT REPORT AND COMPLIANCE REPORT IN THE EXTENSIBLE BUSINESS REPORTING LANGUAGE (XBRL) MODE.

General Circular No. 02/2013

Source: www.mca.gov.in

In continuation of MCA's General Circular Nos. 8/2012 dated May 10, 2012 [as amended on June 29, 2012], 18/2012 dated July 26, 2012 and 43/2012 dated December 26, 2012, it has been decided that all cost auditors and the companies concerned are allowed to file their Cost Audit Reports and Compliance Reports for the year 2011-12 [including the overdue reports relating to any previous year(s)] with the Central Government in the XBRL mode, without any penalty, within 180 days from the close of the company's financial year to which the report relates or by February 28, 2013, whichever is later. The Institute is requested to circulate this for the information of all concerned.

CUSTOMS

CIRCULARS:

1. REGARDING DISPOSAL OF FIREARMS IMPORTED AS BAGGAGE UNDER TRANSFER OF RESIDENCE.

Circular No. 04/2013-Customs

Source: www.cbec.gov.in

The undersigned is directed to refer to Ministry's letter F. No. 497/57/87-Cus-VI, dated 05.01.1998 whereby

it was clarified firearms imported as baggage are not allowed to be transferred to any person for consideration or otherwise during the lifetime of the importer and to state that this issue has been re-examined in the context of a reference requesting permission to dispose an imported firearm on ground of old age.

2. In this regard it is observed that DGFT has revised the import policy on disposal of imported firearms vide Public Notice No. 82/2009-2014(RE-2010), dated 17.10.2011. Accordingly, Para 2.43.2 of the Handbook of Procedures Vol.I, 2009-2014 stands modified and amongst other changes it now provides that transfer of imported firearms will not require permission from DGFT after ten years of import. Imports under baggage are exempt from the normal provisions of the Foreign Trade Policy in terms the Foreign Trade (Exemptions from Application of Rules in Certain Cases) Order, 1993. Thus, the said

DGFT's Public Notice dated 17.10.2011 does not apply to imports as baggage. The implication is that the relaxation provided by DGFT does not apply to firearms imported as baggage under transfer of residence and the restriction that these cannot be disposed in any manner during the lifetime of the importer continues to apply. This places persons importing firearms as baggage at a disadvantage viz-a-viz other importers.

3. DGFT was consulted in order to address the inequitable situation aforementioned. DGFT has clarified that the relaxation at their end in regard to allowing the disposal of imported firearms was made in consultation with the Ministry of Home Affairs, amongst others. DGFT has also recommended that it is desirable to liberalize the provision of disposal of firearms imported as baggage and harmonize it with their Public Notice.

4. In view of the above, I am directed to state that Government has decided to allow passengers importing a firearm as baggage on transfer of residence to dispose the same after ten years of import. The disposal will be to persons legally entitled to possess the firearm. The condition that no disposal can take place till ten years of import may be endorsed on the arms license of the passenger at the time of granting the facility under transfer of residence.

5. Further, in view of the sensitive nature of the item viz. firearm, Government has decided that an eligible person would be allowed to import only



“If you do not hope, you will not find what is beyond your hopes” - St. Clement of Alexandria

one firearm under transfer of residence in his/her lifetime. In other words, even though the facility of transfer of residence can be availed every three years at present, a firearm can be imported only once.

6. Board's instruction vide F.No. 497/57/87-Cus-VI dated 05.01.1988 and subsequent Circulars including Circular No. 63/1995 Cus., dated 07.06.1995 stand modified to the aforementioned extent.
7. The change in Government policy may be brought to the notice of all concerned. Difficulty, if any, in implementing this decision may be immediately informed to the Board.

2. REGARDING SINGLE REVOLVING BANK GUARANTEE FOR DIFFERENT TRANSACTIONS FOR IMPORT OF SILVER OR GOLD OR PLATINUM.

Circular No. 30/2013-Customs

Source: www.cbec.gov.in

Representations have been received from the Gem & Jewellery sector to allow their exporters to execute revolving Bank Guarantee to be used for import of gold/ silver/ platinum, alloys, findings and mountings of gold/silver/ platinum and plain semi-finished gold/silver/platinum jewellery.

2. Notification No. 56/2000-Cus dated 05.05.2000, as amended, exempts gold/silver/platinum, alloys, findings and mountings of gold/silver/platinum and plain semi-finished gold/silver/platinum jewellery falling within Chapter 71 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India by, inter alia, status holders, or exporters of three years' standing having an annual average turnover of five crore rupees during the preceding three licensing years under the scheme for 'Export Against Supply by Foreign Buyer' as referred to in paragraph 4A.8 of the Foreign Trade Policy, from the whole of the duty of customs leviable under the First Schedule to the Customs Tariff Act, and from the whole of the additional duty leviable under section 3 of the said Tariff Act, subject to the conditions specified in the said notification. Duty free import is allowed for manufacturing and export of gold/silver/platinum jewellery or articles as laid down in the said notification subject to furnishing a Bond of an appropriate amount and Bank Guarantee for a sum equivalent to one and half times of the Customs duty leviable on the said goods imported.
3. The matter has been examined. The request of the Gem & Jewellery sector is to allow revolving use of the Bank Guarantee. After considering the



representations from the trade & industry, it has been decided that the Bank Guarantee furnished by the importer can be used for subsequent consignments, if the importer has fulfilled the export obligation and export proceeds realized in respect of the earlier consignments. The bank guarantee may be so used for subsequent import consignments, provided it is sufficient to cover the duty involved and has validity for sufficient time period with self-renewal in-built provision. The field formations need to take care to ensure that the Bank Guarantee remains valid till the export proceeds are realized.

3. REGARDING ISSUE OF CUSTOM HOUSE AGENT LICENSE.

Circular No. 06/2013-Customs

Source: www.cbec.gov.in

Attention is invited to Board's Circular No. 9/2010- Customs dated 08.04.2010 on the above cited subject.

2. The Hon'ble Supreme Court in Civil Appeal Nos. 4053-4061 of 2012 [arising out of SLP (C) Nos. 19124-19132 of 2010] in the case of Sunil Kohli and others vs. Union of India and others vide order dated 27.04.2012 has held that those who had passed the examination under Customs House Agents Licensing Regulations, 1984 not have to again appear for examination under the Customs House Agents Licensing Regulations 2004 (CHALR 2004).
3. In order to implement the aforementioned decision of Hon'ble Supreme Court, Board has decided to delete Para 8.1 and Para 8.2 of Circular No. 9/2010-Customs dated 08.04.2010. The implication of this modification of Board Circular No. 9/2010-Customs dated 08.04.2010 is that the Custom shall no longer insist that persons who have passed the examination under the 1984 Regulations have to additionally qualify in the new subjects given below.
 - (a) The Patents Act, 1970 and Indian Copyright Act 1957;
 - (b) Central Excise Act, 1944;
 - (c) Export promotion schemes;
 - (d) Procedure on appeal and revision petition;
 - (e) Prevention of Corruption Act, 1988;
 - (f) Online filing of electronic Customs declarations;
 - (g) Narcotics Drug and Psychotropic Substances Act, 1985; and
 - (h) Foreign Exchange management Act, 1999.

"To fulfill the dreams of one's youth; that is the best that can happen to a man. No worldly success can take the place of that" - Willa Cather

Circulars and Notifications

Thus, subject to fulfillment of all others requirements such persons will now be directly eligible for grant of CHA license.

4. These instructions may be brought to the notice of the trade by issuing suitable Trade / Public Notices. Suitable Standing orders/instructions may be issued for the guidance of the field officers. Pending court cases, if any, may also be suitably handled.

NOTIFICATIONS:

1. AMENDS NOTIFICATION NO. 12/2012-CUSTOMS, DATED THE 17TH MARCH, 2012

Notification No. 1/2013-Customs

Source: www.cbec.gov.in

G.S.R. (E). - In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 12/2012-Customs, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 185(E) dated the 17th March, 2012, namely: -

In the said notification, in the Table,-

- (i) Against S. No. 116, for the entry in column (5), the entry "4%" shall be substituted;
- (ii) Against S. No. 318, for the entry in column (5), the entry "4%" shall be substituted;
- (iii) In S. No. 321, against item (i), for the entry in column (4), the entry "6%" shall be substituted;
- (iv) Against S. No. 323, for the entry in column (4), the entry "6%" shall be substituted;
- (v) Against S. No. 328, for the entry in column (4), the entry "6%" shall be substituted;

2. REGARDING INCREASE IN BASIC CUSTOM DUTY ON ALL TYPES OF CRUDE EDIBLE OIL.

Notification No. 02/2013-Customs

Source: www.cbec.gov.in

G.S.R. (E). - In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 12/2012-Customs, dated the 17th March, 2012 which was published in the Gazette of India, Extraordinary, vide G.S.R. 185(E), dated the 17th March, 2012, namely: -

In the said notification, in the Table,-

- (i) Against S. No. 51, for the entries occurring in column (4) against clauses (A), (B) and (C) of item II of column (3), the entry "2.5%" shall respectively be substituted;
- (ii) Against S. No. 55, for the entry in column (4), the entry "2.5%" shall be substituted;
- (iii) Against S. No. 57, for the entry in column (4), the entry "2.5%" shall be substituted;
- (iv) Against S. No. 62, for the entry in column (4), the entry "2.5%" shall be substituted;
- (v) Against S. No. 65, for the entry in column (4), the entry "2.5%" shall be substituted.

CENTRAL EXCISE

1. AMENDS NOTIFICATION NO. 12/2012-CENTRAL EXCISE, DATED THE 17TH MARCH, 2012.

Notification No.1/2013-Central Excises

Source: www.cbec.gov.in

G.S.R. (E). - In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 12/2012-Central Excise, dated the 17th March, 2012 which was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 163(E) dated the 17th March, 2012, namely: -

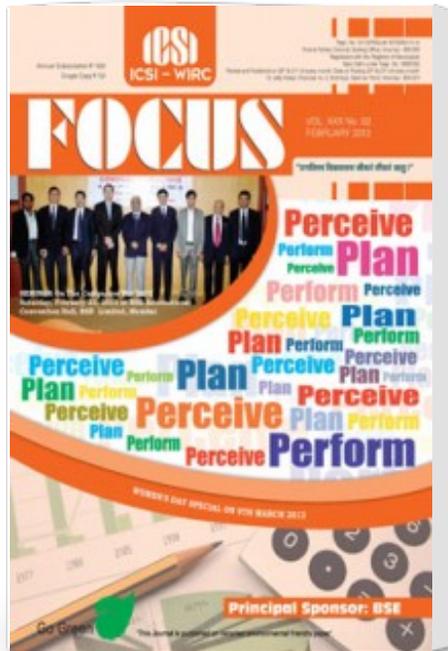
In the said notification, in the Table,-

- (i) for S. No. 189 and the entries relating thereto, the following shall be substituted-

"189	71	Gold bars, other than tola bars, bearing manufacturer's engraved serial number and weight expressed in metric units manufactured in a factory starting from the stage of-	5%	-
		(i) (a) Gold ore or concentrate; (b) Gold dore bar; or (ii) Silver dore bar	3%	-"
Explanation.- For the purposes of this entry, 'gold dore bar' shall mean dore bars having gold content not exceeding 95% and 'silver dore bar' shall mean dore bars having silver content not exceeding 95% accompanied by an assay certificate issued by the mining company, giving details of composition				

- (ii) in S. No. 191, against item (i), for the entry in column (4), the entry "5%" shall be substituted.

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