

**Newsletter for September, 2016**  
**By Amita Desai & Co.**



*We love to serve and add value to business of our clients*



**Mumbai Off :**

1005, Hubtown Solaris  
Off Western Express Highway  
East End of Andheri Flyover

Landline: + 91-22-2684-5920/21

Fax: + 91-22-6678-7499

Mobile : + 91-982-017-7691

**Hyderabad Off :**

My Home Hub, 4th Floor, C Block, Madhupur,  
Hi-Tech City, Hyderabad, AP 500 081

**Greetings and a warm welcome to our August Month's edition of Newsletter!**

We are pleased to share our Newsletter for the month of September 2016. The newsletter covers the updates / amendments of [Ministry of Corporate Affairs \(MCA\)](#), [Securities and Exchange Board of India \(SEBI\)](#), and [Reserve Bank of India \(RBI\)](#).

The Newsletter is part of our knowledge sharing initiative. Efforts have been made to share notifications and circular issued by regulatory authorities during the month in concise and in simplified manner. We have tried to compile provisions related to Corporate Social Responsibility (CSR) as the [Article of the Month](#).

Please feel free to leave comments, thoughts or suggestions.

We appreciate your support and are so happy to have you as a reader.

With warmest thanks,

**Amita Desai & Team**



## **MCA UPDATES:**

### **A. Designation of certain courts as Special Courts:**

MCA vide its General Circular dated September 01, 2016 has designated certain existing courts of Chhattisgarh, Rajasthan, Punjab and Haryana, Union Territory of Chandigarh, Districts of Coimbatore, Dharmapuri, Dindigul, Erode, Krishnagiri, Namakkal, Nilgiris, Salem and Tiruppur, Union Territory of Puducherry and State of Manipur as Special courts for speedy trial of offences punishable with imprisonment of two years or more under the Companies Act, 2013.

The link of the above Circular is as under:

[http://www.mca.gov.in/Ministry/pdf/Notification\\_05092016.pdf](http://www.mca.gov.in/Ministry/pdf/Notification_05092016.pdf)

### **B. Unpaid Dividend Account & Investor Education and Protection Fund and Rules made there under:**

MCA vide its notification dated September 5, 2016 has notified Section 124 (1) to (4) and 6 relating to **Unpaid Dividend Account** and Section 125 (8) to (11) pertaining to Investor Education and Protection Fund which will Authority (Accounting, Audit, Transfer and Refund) Rules, 2016. with respect to the manner of administration of the **Investor Education and Protection Fund (“IEPF”)** of the Companies Act, 2013(“the Act”).

Rules relating to IEPF - Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 were notified on September 5, 2016.

Both the above notification came into force from 7th September, 2016.

Below mentioned are the key highlights of notified Sections and Rules:

1. Where a dividend has been declared by a Company but has **not been paid or claimed within 30 days** from the date of the declaration to any shareholder entitled to the payment of the dividend, the Company shall, **within 7 days from the date of expiry** of 30 days, transfer the total amount of unpaid or unclaimed to a **special account** opened by the Company for the purpose called Unpaid Dividend Account.
2. The Company shall within a period of **90 days after the holding of Annual General Meeting (AGM)** and every year thereafter till completion of the **7 years period**, identify the unclaimed amounts, separately furnish and upload on its own website and also on website of Authority or any other website as may be specified by the Government, a statement or information through e- Form No. IEPF 2, separately for each year, containing following information, namely:-
  - the **names** and last known **addresses** of the persons entitled to receive the sum;
  - the **nature of amount**;
  - the **amount** to which each person is entitled;
  - the **due date for transfer** into the Investor Education and Protection Fund; and
  - such other information as may be considered relevant for the purposes.
3. If any default is made in transferring the amount to unpaid dividend account, then

the Company shall pay **interest @ 12% per annum** on such amount which has not been transferred and such amount shall ensure to the benefit of members.

4. Any person claiming to be entitled to any money transferred may apply Company for the payment of the money claimed.

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5. Company can transfer the shares to IEPF in respect of shares which dividend has not been paid or claimed (e-form IPEF-4). Provided that any claimant shall be entitled to claim transfer of shares from IEPF.

The link of the above circular is as under:

[http://www.mca.gov.in/Ministry/pdf/Notification\\_06092016.pdf](http://www.mca.gov.in/Ministry/pdf/Notification_06092016.pdf)

[http://www.mca.gov.in/Ministry/pdf/Rules\\_06092016.pdf](http://www.mca.gov.in/Ministry/pdf/Rules_06092016.pdf)

### **C. Companies (Mediation and Conciliation) Rules, 2016:**

MCA vide its notification dated September 9, 2016 has prescribed Companies (Mediation and Conciliation) Rules, 2016 in order to facilitate voluntary dispute resolution mechanism.

Section 442 is a provision of the Act which enables settlement of dispute through "alternate dispute resolution". Thus, it is a mechanism to reduce the burden of quasi-judicial bodies.

#### **Meaning of Mediation**

The term Mediation has not been defined under the prescribed Rules however it can be understood as "an act of a third person who interferes between two contending parties with a view to reconcile them or persuade them to adjust or settle their dispute"

#### **Meaning of Conciliation**

The term Conciliation is also not defined under the prescribed Rules however it can be understood as "The process of adjusting or settling disputes in a friendly manner through extra-judicial means".

Pursuant to the rule 4 of Rules, the following persons shall be qualified to be appointed as a mediator or conciliator:

1. the Judge of the Supreme Court of India; or
2. the Judge of a High Court; or
3. the District Judge or Sessions Judge; or

4. a Member or Registrar of Tribunal constituted at National Level under any law for the time being in force; or
5. an officer in the Indian Corporate Law Service or Indian Legal Service with fifteen years experience; or
6. a qualified legal practitioner for not less than ten years; or
7. a professional for at least fifteen years of continuance practice as Chartered Accountant or Cost Accountant or Company Secretary; or
8. a Member Of President of State Consumer Forum; or
9. an expert in mediation or conciliation who has successfully undergone training in mediation and conciliation

The link of the above circular is as under:

[http://www.mca.gov.in/Ministry/pdf/CompaniesMediationandConciliationRules\\_10092016.pdf](http://www.mca.gov.in/Ministry/pdf/CompaniesMediationandConciliationRules_10092016.pdf)

### **D. Increased Powers of National Company Law Tribunal:**

MCA vide its notification dated September 9, 2016 has notified few more sections relating to powers of National Company Law Tribunal ("NCLT").

This notification seems to be in continuation of June 1, 2016 notification issued by Ministry for enforcement of sections pertaining NCLT.

Following is the brief analysis of Sections Notified

**1. Section 227 - Legal advisers and bankers not to disclose certain information**

This section relates to investigation, inspection or inquiry against the affairs of the Company by the Registrar/ **Tribunal**/ Inspector appointed by the Central Government on various grounds, the legal advisers and bankers of such companies shall not require to disclose some information such as-

- a) any privileged communication made to any legal advisers by virtue of being in that capacity;
- b) any information related to other customers of the bankers of the company under the process of investigation etc.

**2. Section 242(1) (b) and (g) - Powers of Tribunal in case application is made w.r.t oppression.**

Tribunal may with a view to bring to an end to the matters, pass orders of winding up, reduction of share capital or setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the Company within three months before the date of the application.

**3. Section 246 and Section 337 to 341**

Penal provisions prescribed under section 337 to 341 would be applicable *mutatis mutandis* with respect to application made in case of oppression and in case of class action suits.

**E. Remuneration payable by the Companies having no profit or inadequate profit without Central Government approval:**

MCA vide its notification dated 12<sup>th</sup> September, 2016 has made amendments to Schedule V of the Companies Act, 2013.

According to the aforementioned notification following amendments are made with respect to Remuneration payable by the Companies having no profit or inadequate profit without Central Government approval

- Limit of Remuneration payable to the managerial person in case of no profit or inadequate profit without Central Government approval are revised.
- In case of managerial person who is functioning in a **professional capacity**, no approval of Central Government is required, if :
  - ✓ such person is **not having any interest** in the capital of the Company or its holding Company or any of its subsidiary Company **during last 2 years before on or after date of appointment** and
  - ✓ **possesses graduate level qualification** and specialized knowledge in the field in which Company operates.

Provided that any employee of a Company holding shares of the Company not exceeding 0.5% of its paid up share Capital under any Employee Stock Option Plan or by way of qualification shall be deemed to be a person not having any interest in the Capital of the Company.

The link of the above circular is as under:  
[http://www.mca.gov.in/Ministry/pdf/Notification\\_12092016.pdf](http://www.mca.gov.in/Ministry/pdf/Notification_12092016.pdf)



#### **F. Important policy decisions taken and major achievement during the month of August, 2016:**

MCA has started a new initiative of compiling the circulars and notifications. The first monthly summary of the MCA for the month of August, 2016 was issued on 9<sup>th</sup> September, 2016.

The link of the above circular is as under:  
[http://mca.gov.in/Ministry/pdf/MonthlySummaryAug\\_19092016.pdf](http://mca.gov.in/Ministry/pdf/MonthlySummaryAug_19092016.pdf)

#### **G. Companies (Management and Administration) Rules, 2014**

MCA vide its notification dated 23<sup>rd</sup> September, 2016 has prescribed the rules further amending the Companies (Management and Administration) Rules, 2014.

#### **Major Amendments are as under:**

- 1 The proviso of sub-rule (1) and sub-rule (2) of rule 3 relating to Register of members is substituted and as per the amendment the Company limited by shares and the Company not having share capital existing on the date of commencement of the Companies Act, 2013 particulars as available in the register of Members maintained under the Companies Act 1956 shall be transferred to the new register of members maintained in Form No.MGT-1.
- 2 Pursuant to aforementioned notification every listed company shall file a return in **Form No.MGT-10** with the Registrar with respect to changes in the shareholding position of promoters and top 10 shareholders of the company, in each case, representing increase or decrease by **2 % or more of the paid-up share capital of the company, within 15 days** of such change.

Earlier as per Rule 13 every listed company had to file Form No.MGT-10 representing increase or decrease by two per cent or more **in the shareholding position of promoters and top ten shareholders of the company.**

- 3 In rule 17 in sub-section (2) in explanation for the words **“on working day”**, the words **“on any day except national holiday”** is substituted and accordingly as per the amendment the requisitionists should convene meeting at Registered office or in the same city or town where Registered office is situated and such meeting should be convened on **any day except national holiday.**
- 4 In the aforesaid principal rules, sub-rule (2) of rule 20 relating to voting through electronic means is substituted. Earlier only the Company referred to in **chapter XB and chapter XC of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009** were not required to provide the facility to vote by electronic means but as per the amendments **Nidhi company will also not required to provide the facility to vote by electronic means.**
- 5 As per the aforesaid notification now the Companies do not require to hold the General Meeting for announcing the results for the resolutions passed by postal ballot
- 6 In clause (e) of sub-rule (1), of rule 25 pertaining to maintenance of Minutes book the words **“or such other places as may be approved by the Board”** is **been omitted** and pursuant to the amendment the minutes books of general meetings, shall be kept at the registered office of the Company and shall be preserved permanently and kept in the custody of the company secretary or any other director duly authorized by the board.
- 7 **Form MGT-6** relating to filling return to the Registrar in respect of declaration under section 89 received by the company is **substituted** and the same is provided in the notification.

The link of the above notification is as under:  
<http://www.mca.gov.in/Ministry/pdf/CompaniesMgtAdminAmendmentRules2016.pdf>

## **SEBI UPDATES:**

### **A. Additional Risk Management Norms for National Commodity Derivatives Exchanges**

In order to further streamlining and strengthening the risk management framework of Commodity Derivatives Markets the Securities Exchange Board of India (“SEBI”) vide circular dated September 01, 2016 has prescribed certain norms which are to be adhered by National Commodity Derivatives Exchanges (“NCDE”).

The norms prescribed in this circular are required to be implemented by NCDE latest by December 1, 2016, except for the norm prescribed for base minimum capital (**BMC**) for clearing members which shall be complied with latest by April 01, 2017.

For further details and for modified risk management norms for NCDE please refer the below pasted link:

[http://www.sebi.gov.in/cms/sebi\\_data/attachd/ocs/1472733199107.pdf](http://www.sebi.gov.in/cms/sebi_data/attachd/ocs/1472733199107.pdf)

### **B. Restrictions on Promoters and Whole Time Directors of Compulsorily Delisted Companies Pending Fulfillment of Exit Offers to the Shareholders**

To enable effective enforcement of exit option to the public shareholders in case of compulsory delisting and taking into account the interests of investors SEBI vide circular dated September 07, 2016 has prescribed additional restrictions under regulation 24 of Delisting Regulations. Accordingly any such Company whose fair value is positive:

1. Transfer by way of sale, pledge, etc., of any of the equity shares by such a Company and the depositories shall not be effected and corporate benefits like dividend, rights, bonus shares, split, etc. shall be frozen, for all the equity shares, held by the promoters/promoter group till the promoters of such company provide an exit option to the public shareholders in

compliance with sub-regulation (3) of regulation 23 of the Delisting Regulations.

2. the promoters and whole-time directors of the compulsorily delisted company shall also not be eligible to become directors of any listed company till the exit option as stated in point 1 above is provided.

**“Compulsorily Delisted Company”** means a company whose equity shares are delisted by the recognised stock exchange under Chapter V of the Delisting Regulations.

SEBI shall have authority to take appropriate action(s) against the promoters/promoter group and directors of the compulsorily delisted company for non-compliance with sub-regulation (3) of regulation 23 (pertaining to acquisition of shares by promoters from public shareholders) of the Delisting Regulations.

For further details please refer the below pasted link:

[http://www.sebi.gov.in/cms/sebi\\_data/attachd/ocs/1473248605168.pdf](http://www.sebi.gov.in/cms/sebi_data/attachd/ocs/1473248605168.pdf)

### **C. Daily Price Limits (DPL) for Non-Agricultural Commodity Derivatives/ First Day DPL for All Commodity Derivatives**

SEBI vide its circular dated has prescribed norms related to Daily Price Limits (DPL) determination for Non-Agricultural Commodity Derivatives/ First Day DPL for all commodity derivatives.

For further details please refer the below link:

[http://www.sebi.gov.in/cms/sebi\\_data/attachd/ocs/1473245233159.pdf](http://www.sebi.gov.in/cms/sebi_data/attachd/ocs/1473245233159.pdf)



#### **D. Transaction Charges by Commodity Derivatives Exchanges**

In order to promote competition in the market and bring in greater efficiencies and lower transaction costs to market participants, SEBI vide its circular dated September 07, 2016 has prescribed norms applicable to the Commodity Derivatives Exchanges while levying transaction charges.

For further details please refer the below pasted link:

[http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1473245182317.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1473245182317.pdf)

#### **E. Due Date Rate (DDR) fixation for Regional Commodity Derivatives Exchanges (“RCDE”)**

SEBI vide its circular dated September 07, 2016 has prescribed guidelines for DDR fixation for RCDE.

As per the guidelines the exchanges shall constitute DDR Committee which would decide the names of at least 15 entities/persons of various trade interests from upcountry markets for forming Spot Price Polling Panel.

DDR has to be arrived by the DDR Committee in terms of the procedure prescribed therefor in the relevant bye-laws and these guidelines, and then recommended to the Board of the Exchange for its final approval.

#### **F. Mechanism for regular monitoring of and penalty for short-collection/non-collection of margins from clients**

In order to consolidate and update norms prescribed by the Forward Markets Commission (FMC) relating to regular monitoring of and levy of penalty for short-collection /non-collection of margins from clients, SEBI has issued circular dated September 07, 2016.

Penalty for short/non-collection of margins from their client beyond T + 2 working days:

#### **For each member**

- Short collection/non-collection of margins (< INR 1 lakh ) AND (< 10% of applicable margin)

**Penalty: 0.5% per day.**

- Short collection/non collection of margins (> =INR 1 lakh) OR (>=10% of applicable margin)

**Penalty: 1.0% per day.**

The ‘margins’ for this purpose shall mean initial margin, extreme loss margin (ELM), mark to market margin, special / additional margin, delivery margin or any other margin as prescribed by the Exchange to be collected by member from their clients.

In case of repeated defaulters, who default 3 times or more during a month, the penalty would be 5% of the shortfall in such instances.

All the penalties collected as prescribed above shall be credited to the Investor Protection Fund.

For further details please refer the below pasted link:

[http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1473243582335.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1473243582335.pdf)

#### **G. Standardization and Simplification of Procedures for Transmission of Securities**

SEBI vide circular dated September 15, 2016 has prescribed documentary requirement for securities held in physical mode.

1. In case of Securities held in single name with a nominee:

- Duly signed transmission request form by the nominee.
- Duly attested Original or Copy of death certificate by a Notary Public or by a Gazetted Officer.
- Self attested copy of PAN card of the nominee. (Copy of PAN card may be substituted with ID proof in case of residents of Sikkim after collecting address proof).

2. In case of Securities held in single name without a nominee:

a. Affidavit on appropriate non judicial stamp paper from all the legal heirs made -to the effect of identification and claim of legal ownership to the securities.

b. For value of securities upto 2,00,000 (Rupees Two lakh only) per issuer company as on date of application, one or more of the following documents:

i. Succession certificate or probate of will or will or letter of administration or court decree, as may be applicable in terms of Indian Succession Act, 1925.

ii. In the absence of the documents as mentioned at (i) above,

- A No objection certificate [NOC] from all legal heir(s) executed by all the legal heirs of the deceased holder not objecting to such transmission (or) copy of Family Settlement Deed duly notarized

and

- An Indemnity bond made on appropriate non judicial stamp paper – indemnifying the STA/Issuer Company.

c) For value of securities more than ₹2,00,000 (Rupees Two lakh only) per issuer company as on the date of application:

- Succession certificate or probate of will or will or letter of administration or court decree, as may be applicable in terms of Indian Succession Act, 1925.

#### **H. Unique Client Code (UCC) and Mandatory requirement of Permanent Account Number (PAN)**

SEBI vide its circular dated September 16, 2016 has prescribed norms relating to UCC and mandatory requirement of PAN

Use of Unique Client Code (UCC) by the members of the commodity derivatives exchanges is mandatory while undertaking clients transacting on the commodity derivatives exchanges.

PAN is considered as sole identification number and mandatory for all entities/persons who are desirous of transacting on the commodity derivatives exchanges.

However, the investors residing in the State of Sikkim, Central Government, State Government, and the officials appointed by the courts e.g. Official liquidator, Court receiver etc. (under the category of Government) are exempted from the mandatory requirement of PAN.

The commodity derivatives exchanges are authorized to impose penalty on the member at the rate of 1% of the value of every trade that has been carried out by the member without uploading the UCC details of the clients.

## **I. Investor Protection Fund (IPF) and its related matters**

➤ SEBI vide its circular dated September 26, 2016 has prescribed norms and guidelines relating to IPF which will be applicable to all National Commodity Derivatives Exchanges (Exchanges). Guidelines have been given pursuant to:

- Constitution and Management of the IPF
- Contributions to the IPF
- Manner of filing/inviting claims from the Investors/Clients
- Eligibility of Claims against defaulter member
- Determination of Legitimate Claims
- Threshold limit for Claims
- Disbursements of claims from the IPF

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## **RBI UPDATES:**

### **A. Free Annual Credit Report to Individuals**

RBI vide circular no. 58 dated September 01, 2016 as prescribed directions pursuant to Free Annual Credit Report to Individuals.

Each customer of a credit institution should be provided one base level consumer Credit Information Report (“CIR”) free of cost every year by each Credit Information Company (“CIC”). Customer of a credit institution is entitled to have a copy of the report upon request.

CIC shall provide access in electronic format, upon request and after due authentication of the requester, to one free full credit report (“FFCR”) including credit score, once in a year (January- December), to individuals whose credit history is available with the CIC.

The CICs shall notify on their website the procedure for accessing the FFCR, and also have a board approved policy in this regard.

### **B. Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Thirteenth Amendment) Regulations, 2016**

RBI vide its notification dated September 09, 2016 has prescribed amendments in the Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) Regulations, 2000.

According to the amendments investment by persons resident outside India upto 100% is allowed in Financial Services activities regulated by financial sector regulators viz., RBI, SEBI, IRDA, PFRDA, NHB or any other financial sector regulator as may be notified by the Government of India under automatic route.

### **C. Master Direction - Monitoring Of Frauds In Nbfcs (Reserve Bank) Directions, 2016**

RBI has issued its master direction on September 29, 2016 pertaining to monitoring of frauds in NBFCs (Reserve Bank) Directions, 2016.

The link for the said master direction is as pasted below:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10622&Mode=0>

### **D. Master Direction - Non-Banking Financial Companies Auditor’s Report (Reserve Bank) Directions, 2016**

RBI has issued its master direction on September 29, 2016 with respect to Non-Banking Financial Companies Auditor’s Report (Reserve Bank) Directions, 2016.

The link for the said master direction is as below:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10621&Mode=0>

### **E. Master Direction- Non-Banking Financial Company Returns (Reserve Bank) Directions, 2016**

RBI has issued its master direction on September 29, 2016 with respect to Non-Banking Financial Company Returns (Reserve Bank) Directions, 2016.

The link for the said master direction is as under:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10620&Mode=0>

### **F. Master Circular- Credit Facilities To Minority Communities – Modification**

RBI has issued its master direction on September 29, 2016 with respect to Non-Banking Financial Company Returns (Reserve Bank) Directions, 2016.

The link for the said master direction is as pasted below.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10615&Mode=0>

## ARTICLE OF THE MONTH

### CORPORATE SOCIAL RESPONSIBILITY- GIVING BACK TO SOCIETY

*What started as charity is now understood as a responsibility*

#### ➤ **EVOLUTION OF CSR**

Philanthropy and charity, core values of Indian culture has paved the way for Corporate Social Responsibility ("CSR") in India. In pre-industrialization period also wealthy merchants used to share their wealth with the society for social cause. Since 19<sup>th</sup> century leading business houses with strong business ethics were inclined towards economic development as well as social upliftment.

During Independence agitation strong initiatives towards social development and peace were required. Mahatma Gandhi introduced the notion of "trusteeship", according to which industrialist should manage their wealth so as to benefit the common man. Path enlighten by Mahatma Gandhi lead to foundation of CSR.

Year 1950 witnessed emergence of Public Sector Units (PSU).As the success rate of PSUs was not significant there was a natural shift in expectations from public to private sector. Subsequently during the wave of Liberalization, Privatisation and Globalisation (LPG),CSR became integral element for sustainable business development.

#### ➤ **CSR INITIATIVES IN INDIA**

##### **CSR voluntary guidelines 2009 by Ministry of Corporate Affairs (MCA)**

The guidelines were issued by MCA with a view to reduce the inequality between the generation of wealth and its distribution. Though corporate generated wealth and value for shareholders but at same time nation faced problems of poverty, unemployment, illiteracy, malnutrition etc. As per the guidelines each business entity had to formulate a CSR policy to guide its strategic planning and provide roadmap for its CSR initiatives, which should be an integral part of overall business policy and aligned with its business goals. Since this guideline was optional and voluntary, CSR initiatives were not taken sincerely by the Companies.

However, few corporate groups with strong values and principles, like Tata and Birla took CSR activities as part of their corporate culture way ahead of 2009. Tata group has been always been setting up examples in the field of Social welfare for industries to follow. Such Corporate had reaped the benefit also of such initiative and society has always looked them with good corporate governed companies. It is always Give and Take relationship between the corporate and society and those who understood such relationship had always benefited in terms of values, profit and intangible assets.

##### **The Companies Bill, 2011**

The Standing Committee on the Companies Bill, 2011 recognized that CSR is not sole responsibility of Government, Corporate owe to the people and society and it is time to pay them back in terms of social services and by building social capital for common good. The committee recommended mandatory undertaking of CSR by the Companies.

## **The Companies Act, 2013(the Act)**

In common parlance CSR means contributing to the welfare of society and the environment and to consider the social and environmental impacts of their business.

Though there is no specific definition of CSR given in the Act, however the most appropriate definition is provided by International Organization for Standardization's Guidance Standard on Social Responsibility which enumerated as under:

“Social responsibility is the responsibility of an organisation for the impacts of its decisions and activities on society and the environment, through transparent and ethical behavior that:

- Contributes to sustainable development, including the health and the welfare of society.
- Takes into account the expectations of stakeholders.
- Is in compliance with applicable law and consistent with international norms of behavior
- Is integrated throughout the organization and practised in its relationships.”

With the implementation of Companies Act, 2013 (“the Act”) and in order to make CSR as integral part of business policy of every Company, Section 135 of the Act is mandated / applicable on the Company's having ( “Applicable Company”):

- (i) **Net worth of Rs.500Crore or**
- (ii) **Turnover of Rs.1000 Crore or**
- (iii) **Net profit ofRs. 5Crore, during any financial year**

### ➤ **CSR COMMITTEE/ CSR POLICY**

Such Applicable Company's need to form a CSR Committee of its Board of Directors. In case of a Company which requires Independent Director (ID), CSR Committee should have at least one ID. CSR Committee shall formulate CSR policy based on the group policy of Giving , may be addressing and focusing on issues of society like Rural Development , Health, Education, Poverty, Skill Development or environment etc. and the same should be part of activities notified by the Government under the Act under Schedule VII of the Act . The Committee shall also recommend the amount of expenditure to be incurred on the CSR activities.CSR policy shall be displayed on the Company's website, if any.

### ➤ **CSR EXPENDITURE**

Further such Applicable Company's Board need to ensure that it spends in every financial year atleast **2%** of average net profit of three (3) immediately preceding financial years towards the activities specified in Schedule VII the Act and as per its CSR Policy.

### ➤ **CSR REPORTING- COMPLY OR EXPLAIN**

If such Applicable Company fails to spend CSR expenditure, its Board need to specify in their Report the reasons for not spending the CSR amount. No strict penal provisions have been prescribed by the Act for not spending the same. The approach under the Act as on date is to '**comply or explain**'.



### ➤ **ACTIVITIES NOT COVERED UNDER CSR**

Following are certain activities which are not considered as part of CSR expenditure by the Applicable Company, such as:

- Activities undertaken in **normal course of business** and only for the benefit of the employees ;
- Activity undertaken **outside India** ;
- **Contribution of any amount directly or indirectly to any political party** under section 182 of the Act ; and
- **Activity not covered under Schedule VII** of the 2013 Act.

### ➤ **TAX BENEFIT**

No, specific Tax exemptions have been extended to CSR Expenditure as expenditure on CSR does not form part of Business Expenditure. However, expenditure incurred on several activities like rural and skill development projects, contribution to Prime Minister National Relief Fund etc., which are covered under Schedule VII, already enjoy exemptions under various sections of Income Tax Act, 1961, subject to fulfillment of specified conditions.

### ➤ **HIGH LEVEL COMMITTEE**

MCA had constituted a High Level Committee on 03<sup>rd</sup> February, 2015 to suggest measures for monitoring the progress of implementation of CSR policies by Companies. The committee was formed with following objectives:

- To recommend suitable methodologies for monitoring compliance of applicable provision;
- To suggest measures to be recommended by the Government for adoption by the companies for systematic monitoring and evaluation of their own CSR initiatives;
- To examine if a different monitoring mechanism and make suitable recommendations in this behalf;
- To identify strategies for monitoring and evaluation of CSR initiatives through expert agencies and institution to facilitate adequate feedback to the Government with regard to efficacy of CSR Expenditure and quality of compliance by the Companies.

The High Level Committee had submitted its report in September 2015 to MCA. The Committee had observed that the main thrust and spirit of the law is not to just monitor but to create a conducive environment for enabling the corporates to conduct themselves in socially desirable manner.

### ➤ **ROLE OF COMPANY SECRETARIES**

CSR provisions have also widened the scope of Company Secretaries (“CS”). CS can act as legal advisor and can play a vital role in brand building of the Company. Many consultancy firms are emerging which provide specialized consultancy services to the Companies for creation and implementation of CSR strategies aligned to business objectives.

### ➤ **360° IMPACT OF CSR**

In today's time consumers have become much more aware and they don't accept or appreciate unethical business practices or organisations who act irresponsibly.

At the same time social media has emerged as powerful tool disclosing positive as well as negative practices of any organization.

Major impact of CSR activities on the Corporate and Society as a whole are as follows:

1. The organisations undertaking CSR initiatives will find ways to make changes in their services that actually delivers benefits for the community.
2. The Company having CSR framework in place attracts potential employees who are looking for workplaces which have high ethical values.
3. CSR Activities builds and maintains trust between the Company and clients.
4. Company with social values enjoys customers loyalty and support.
5. Through CSR, the Company can share positive stories online and through traditional media. It is not necessary to go for expensive advertisement campaigns, instead the mouth publicity can create positive image of the Company.
6. CSR initiatives help to achieve long term goals and contribute towards sustainable development of Corporates, Society and Environment as a whole.
7. CSR certainly build brand value to the Company and bring intangible assets to organization.
8. Develop corporate reputation and legitimacy;

### **\* WHO CARES FOR CSR**

**(Source – Haward Law School Forum on Corporate Governance and Financial Regulation)**

Obviously, **Corporate Boards, CEOs, CFOs**, and upper echelon business executives care. They are the guardians of companies' financial well-being and, ultimately, must bear responsibility for the impact of CSR on the bottom line. At multiple levels, executives need to justify that CSR is consistent with the firm's strategies and that it is financially sustainable.

**However, other groups care as well like :**

- **Shareholders** are acutely concerned with financial performance and sensitive to possible threats to management's priorities.
- **Social activists** care because it is in their long-term best interests if companies can sustain the types of social initiatives that they are advocating.
- **Governmental bodies** care because they desire to see whether companies can deliver social and environmental benefits more cost effectively than they can through regulatory approaches.
- **Consumers** care as well, as they want to pass on a better world to their children, and many want their purchasing to reflect their values.

## ➤ **OUR VIEWS AND WAY FORWARD**

No business can survive in isolation, as they procure resources from society, generate wealth from society and hence they should give back to society its fair share. To be successful, respected and desirable corporate citizen, business should go beyond statutory requirements. While India has taken several strides in achieving socio-economic development, it still needs to inculcate the culture of social welfare.

Through the Act, Government is building an environment for business to share their profits. Although today the approach is '**comply or explain**' and no penalties are levied for non compliance in monetary terms, still the society recognize and reward the business groups which has policy to add value for all its stakeholders including society at large.

A potential change in the economy and country will be evident when more and more companies engage in CSR and voluntarily choose to carry a greater responsibility for society and the environment. This greater responsibility most often comes with an additional cost to the company and may clash to its objective of maximizing the profits from its business and hence the company should have its vision and strong reason for its CSR activities for its economical and non-economical benefits.

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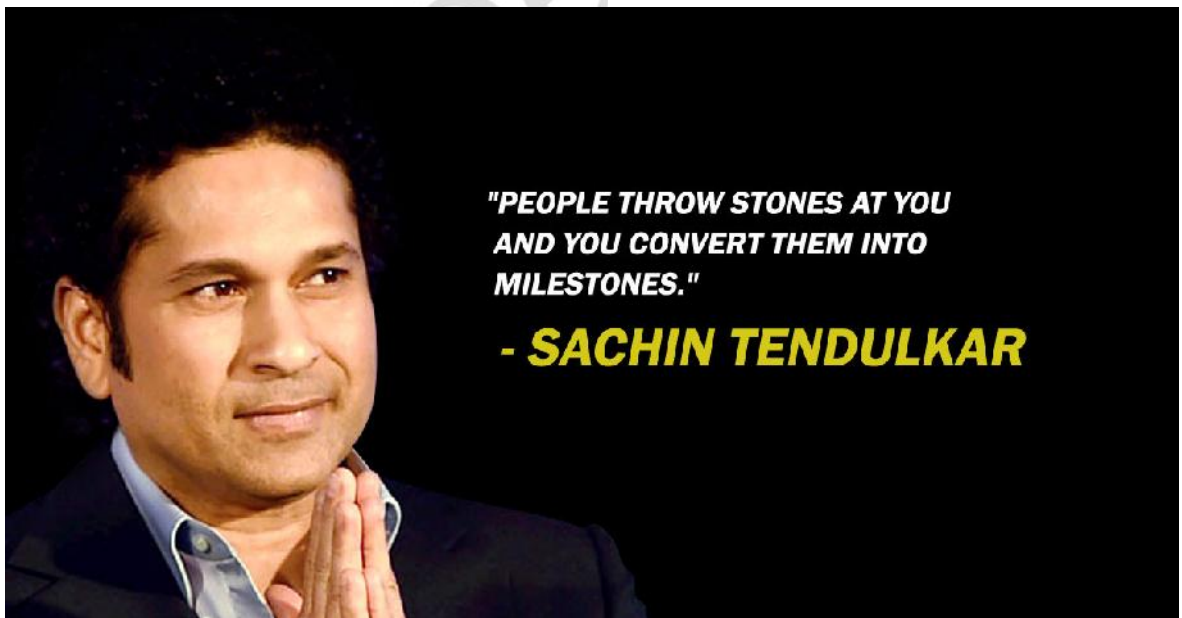
Amita Desai & Co.

## INSPIRATIONAL QUOTES

The task of the leader is to get his people from where they are to where they have not been.

Henry Kissinger

quote fancy



## **Disclaimer**

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## **Amita Desai & Co. Company Secretaries**

### **Mumbai Off :**

1005, Hubtown Solaris  
Off Western Express Highway  
East End of Andheri Flyover

Landline: + 91-22-2684-5920/21

Fax: + 91-22-6678-7499

Mobile : + 91-982-017-7691

### **Hyderabad Off :**

My Home Hub, 4th Floor, C Block, Madhupur,  
Hi-Tech City, Hyderabad, AP 500 081

**Chief Editor: Mrs. Amita Desai**

**Editor: For Amita Desai and Company**

- Mr. Chetan Jain**
- Ms. Mahima Ved**
- Ms. Parul Gupta**
- Ms. Samruddhi Varadkar**