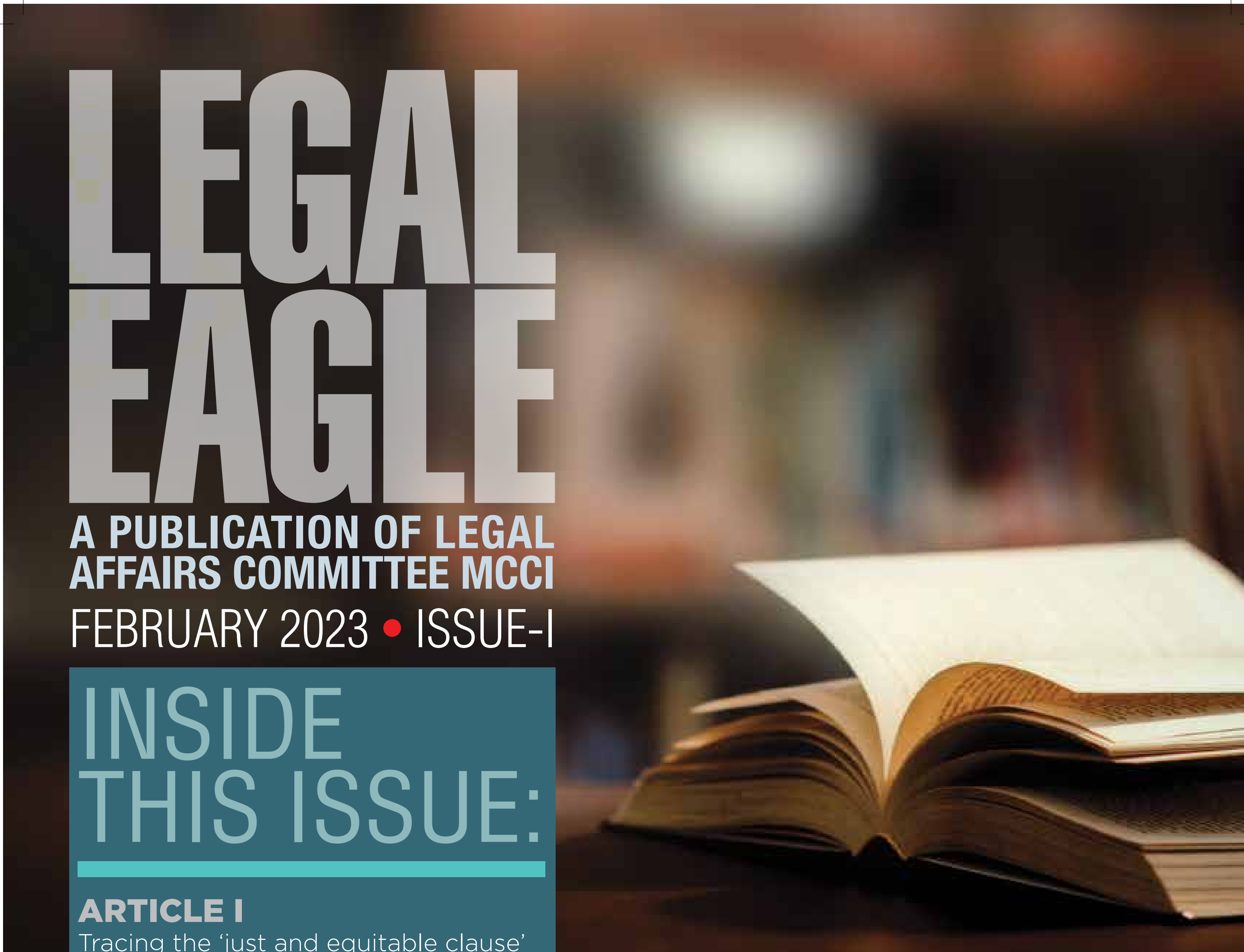

LEGAL EAGLE

A PUBLICATION OF LEGAL AFFAIRS COMMITTEE MCCI

FEBRUARY 2023 • ISSUE-I

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MESSAGES

Namit Bajoria
President, MCCI

The first phase of last year was difficult for businesses, owing primarily to the constant price volatility of coal and other fuels and minerals as a result of the Russia-Ukraine conflict. However, during the last quarter of fiscal 2022-23, it is anticipated that private investment will continue to provide momentum to short- and medium-term growth in India, and all the investments in the public sector will witness a cyclical effect and give rise to a multiplier effect in total output. India is expected to maintain its economic stability during the anticipated global recession due to over-tightening monetary policy in the USA and EuroZone.

MCCI reiterates that the Council on Legal & Corporate Governance will work for the betterment of the business community and society at large and it will continue to nourish and develop innovative ideas and entrepreneurship around the world.

MESSAGES

Mamta Binani
Chairperson,
Legal Affairs Committee,
MCCI

Amidst the geopolitical volatilities, India is placing all its bets on healthy domestic drivers to realize its ambition of a \$ 5 trillion economy by 2024-25 through an increase in exports and employment opportunities. The First Budget of Amritkaal also aimed at providing “vanchiton ko variyata” through its innovative and visionary schemes. While contributing to the creation of an Aatmanirbhar Bharat, the Council on Legal and Corporate Governance of MCCI is proud to publish the legal eagle issue to add value to our beloved readers by keeping its members apprised of the latest legal developments.

ARTICLE I

Tracing The 'Just and Equitable Clause' in the Winding – Up of the Company: A Non-Consideration of the Rights of other Stakeholders

Introduction

In this article 'oppression and mismanagement which is a remedy to provide relief to minority shareholders has been analyzed. The article focuses on the tests required to be proved by contemporary judgments, which require a similar threshold to be proved as required in the cases of winding up. A suggestion has been made to reduce such threshold and shift the focus towards providing alternative remedies in cases of oppression and mismanagement. This would result in a reduced burden on the minority shareholders to make a claim for oppression and mismanagement. Moving on, an amendment should be made under section 242 of the Companies Act ("Act") as well to remove the requirement of proving tests similar to winding-up are not required to make a claim for oppression and mismanagement.

The Concept of Corporate Democracy and Oppression and Mismanagement

The principle of corporate democracy implies that in the company the rule of the majority is sacrosanct as it is the majority voting in a company which is determinative of the decisions in the company. Further, the courts should generally not intervene with the day-to-day functioning of a company's decisions, and should also not restrict themselves to the powers of the Board of Directors.

In these circumstances, there might be a situation where law's intervention is required where the actions of the majority shareholders are not dealing with an action of fair dealing, and the company's affairs are conducted in a manner that is oppressive to the members of the company or is contrary to the public interest.

Under these situations, the law's intervention might be required. The Companies Act, 1956 provides for such a remedy under sections 397 and 398 of the Act. The Companies Act, 2013 provides for the remedy of oppression and mismanagement under sections 241 and 242 of the Act.

Analyzing Legislative History:

In the Cohen Committee Report,

1978 it was recommended that "the court should have the power to impose upon the parties to the dispute whatever settlement the court considers just and equitable." On the basis of the Cohen Committee Report, section 210 was introduced in the English Companies Act of 1948, followed by the introduction of section 153 C in the Indian Companies Act of 1913. The scope was further expanded by the Bhabha Committee, in 1952, which widened the scope of the area. The remedy was further expanded not just to the minority oppression but also to the cases of mismanagement of the companies' affairs in a prejudicial manner.

Interpreting Section 242 Of the Companies' Act and The Court's Construction of The Same

Section 241 of the Act provides for the remedy of oppression and mismanagement. Section 242 gives power to the Tribunal with respect to the application made under section 241.

The word 'oppression and mismanagement' have not been defined in the Act. Therefore, understanding its construction through various case laws would be helpful.

The case of Palghat Exports(P) Ltd. vs Chandran[1], was against the judgment of the company judge. The court in its analysis said that winding up is a drastic procedure, which has often not even helped the oppressed and the prejudiced members. The court further relied upon the precedents to define what constitutes oppression and mismanagement as the same has not been defined in the Act. The court relying on the English case of Scottish Cooperative Wholesale Society Ltd vs Meyer and others had held that as a preliminary inquiry to section 397, it must be shown that there existed a 'just and equitable clause' for the winding up of the company. After that, it must be shown that the majority shareholders' conduct was oppressive to the minority shareholders and this requires that oppressive events should continue as a part of the consecutive story up till the date of the petition, and the conduct should be harsh, burdensome and wrongful, and should not result from a mere lack of confidence between the majority and the minority shareholders unless the lack of confidence results from majority's oppression of the minority and involves an element of lack of fair dealing or probity[2]. The same stance has also been taken in other cases such as SP Jain vs Kalinga Tubes Ltd, wherein it was clarified by the Supreme Court that it was not just enough for the petitioner to show that there exists a just and equitable clause for the purpose of but it, it is further required to be proved that the events should be considered in isolation but not as a part of the consecutive story.

In Hanuman Prasad Bagri v. Bagress Cereals (P) Ltd[3], the court held that in order to wind up a company under just and equitable grounds, a case for the same must be made.

In Suryakant Gupta v. Rajaram Corn Products (Punjab) Ltd.[4], an appeal was filed for the winding up of the company on the ground of mismanagement. The case was remitted to CLB and it was held that if neither any third party nor the shareholders are willing to buy the shares of the company at the valuation made, then orders for winding up the company should be made.

In the case of Rajahmundry Electric Supply Ltd. vs Nageswara[5] Rao, it was held by the Court that where the directors have only misappropriated the company's funds and nothing else, an order of winding up would not be enough as the same would operate harshly on the shareholders' rights.

Therefore, according to the construction of section 242 and the court's interpretation of the same, a heavy burden is placed on the petitioning shareholders at present, which requires proving two conditions in order to make a claim for oppression and mismanagement: (i)that the affairs of the company were conducted in a manner which was prejudicial and oppressive to the company's members, and (ii) that such members would be unfairly prejudiced if the firm was wound up, but the facts would otherwise support a rational and equitable reason for doing so. Moving on under section 242(1)(b) where the facts justify the making of a claim of winding up, however, the same would be prejudicial to

1 1993 SCC Online Ker 441
2 Ibid
3 (2001) 4 SCC 420.
4 2009 SCC OnLine P&H 11560.
5 AIR 1956 SC 213.

some members of the company, the courts could grant alternative remedies.

The first requirement is a substantial requirement, which is required to be proved under the Act and the second requirement is a conditional requirement which is required to be proved as well.

As is visible in the judgments cited the section for oppression and mismanagement has drawn upon from the notions of "just and equitable cause" under winding up, and therefore it is difficult to obtain alternative remedies as well under the law because the threshold equivalent to winding up needs to be proved and that the winding up would be prejudicial, so alternative remedies should be provided.

A classic example of the problem created by such a construction of the section is visible in the case of Tata Consultancy Services Ltd vs Cyrus Investments Ltd[6], wherein it was reiterated by the court that a person's removal from the post of executive chairman, would not constitute as prejudicial/ oppressive, as a case of functional deadlock had not been pleaded.

Now, the requirement to prove deadlock is actually a requirement in the cases of winding up[7], however importing the same to the oppression and mismanagement, has made it difficult for the minority shareholders to get relief.

Rather than this, the focus should be more on alternative remedies and the requirement to prove prejudice. A similar stance has been taken by the law in various countries. For instance, in the case of Sim Yong Kim vs Evenstar Investments Pvt Ltd.[8], it was observed by the courts in Singapore that the winding up order in a case of "just and equitable ground" should be reduced to a buy-out order.

In Australian jurisdiction as well, it has been held by the court, that the practice of winding up is withheld so as to encourage the parties to reach an alternative solution, and order of winding up can be made only when it could be proved that no such other remedy is available.

Now, even though it had been accepted that winding up is a remedy that should be adopted as a last resort, which lead to the introduction of section 241 under the Act, and under section 241 of the English Companies Act., 1948. However, oppression and mismanagement should be accepted as a unique remedy in itself, wherein it is not considered essential to first prove that the situation is grave enough to claim a winding-up, but however since the same would cause injustice to certain members, the Tribunal should exercise powers to grant alternative remedies.

Further, applying the tests of winding up, such as the 'just and equitable clause' and winding up and 'functional deadlock' has made it difficult to even claim alternative remedies in cases of oppression and mismanagement as was visible in the case of Cyrus Mystry.

Hence, section 242(1)(b) shall be remedied and it should be amended and should not include the phrase, "that to wind up the company would unfairly prejudice such member or members, but that otherwise, the facts would justify the making of a winding-up order."

Conclusion

At present, the law operates in a manner that the remedy of oppression and mismanagement exists as an alternative to winding up. More emphasis should be laid on the alternative remedies for oppression and mismanagement under section 242 of the Act. Further, the threshold for claiming alternative remedies should not be the same as the ones required for proving a case of winding up.

Such an approach has been in England as well, wherein upon the recommendations of the Jenkins Committee, the remedy of oppression was reduced to the 'unfair prejudice' remedy. However, in India the law is still the same and even for proving oppression and mismanagement there is a requirement to prove just and equitable grounds for winding up of the company.

Therefore, an approach that focuses more on alternative remedies in cases of oppression and mismanagement, without the requirement of proving the essentials of winding up should be adopted.

6 (2021) 9 SCC 449.
7 Perennial (Capitol) Pts Ltd. and Another vs Capitol Investment Holdings Ltd and Ors.[2018], SGCA 11
8 [2006] SGCA 23

ARTICLE II

Green Taxonomy: Answering the Three Ws

“Climate change is the result of the greatest market failure that the world has seen” stated Mr. Knut N. Kjær, Executive Chairman of Sector Asset Management and first manager of the Government Pension Fund of Norway, who stressed that markets should be taking the long-term into account when calculating for the risks and returns of their investments[9]. In furtherance thereof, India is currently developing its national framework on green taxonomy, which shall facilitate investors as well as companies in contributing towards sustainable and environmentally sound infrastructure. Prior to its introduction in the Indian market, it is crucial to have an inherent impression of the same which is the central aim of this article.

What is green taxonomy?

A green taxonomy is a framework for categorizing assets and economic activities that are considered "green" or ecologically sustainable[10]. Green taxonomies are practical tools that serve a variety of complementing objectives:

i. Taxonomies aid in the prevention of "greenwashing,

ii. They support informed investment choices by investors, and

iii. They direct capital into environmentally friendly or sustainable business ventures and assets[11].

Investors utilize green taxonomies to identify economic activities that are thought to be ecologically sustainable, and investments in these activities are consequently qualified for the moniker "sustainable." Green taxonomies assist businesses in determining how "green" their economic activities are, and they may use this data as a starting point to gauge how their operations are improving the

9 Leena Fatin, ‘Quotes from Climate Bonds 2019 Conference Report: Mobilising Green Trillions, Taxonomies, New financial products, Brown-to-Green transition + More’ Climate Bonds Initiative (March 20, 2019) https://www.climatebonds.net/2019/03/quotes-climate-bonds-2019-conference-report-mobilising-green-trillions-taxonomies-new accessed January 9, 2023

10 Saurabh Trivedi and Shantanu Srivastava, ‘Fact Sheet: Green Taxonomies Explained’ Institute for Energy Economics and Financial Analysis (August 31, 2022) https://ieefa.org/resources/fact-sheet-green-taxonomies-explained accessed January 9, 2023

11 Deborah Thür, ‘Green Taxonomies Around the World: Where Do We Stand?’ Eco:Fact (November 1, 2022) https://www.ecofact.com/blog/green-taxonomies-around-the-world-where-do-we-stand/ accessed January 9, 2023

environment[12].

Why have a green taxonomy?

Green Taxonomy is quintessential in the present times because India is the second most populous nation in the world, with a predicted peak population of 1.6 billion people by 2048. It also has one of the fastest-growing economies in the world. India is also the third greatest emitter of carbon dioxide.

India will be a crucial player in the global calculation of climate change mitigation if it adopts a development track consistent with the 1.5°C- target while pursuing the goal of becoming a US $5 trillion economy. It can inspire its competitors to step up their climate activity and serve as a trailblazing example of how to avoid the intricate trade-offs between growth and the environment[13]. In addition, it strives to attain the following targets:

i. Improved risk assessment through more openness.

ii. Align the finance industry with net-zero objectives.

iii. Promote an environmentally sound economic system.

iv. Redirect funds into ecologically friendly business ventures[14].

How green taxonomy can aid in designing a sustainable lifestyle for commercial undertakings?

i. An environmental taxonomy may give investors the direction and assurance they need to make judgments about their investments that are ecologically responsible.

ii. It can serve as a benchmark for financial institutions (FIs) and businesses in managing and monitoring the environmental component of their financial profiles while enabling regulators like the Securities and Exchange Board of India (SEBI) and the Reserve Bank of India (RBI) to supervise these entities by requiring disclosures that are consistent with the taxonomy.

iii. It can increase the visibility of capital-starved green industries, enabling them to draw necessary investments away from renewable energy, which presently accounts for 80% of green funding in India.

iv. It can make it easier to standardize the methods used for impact measurement, reporting, and data gathering for creating ESG indexes.

v. It can serve as a roadmap for tightening SEBI green bond regulations, which at the moment allow for a variety of "green" investment criteria.

vi. It can also serve as the government's gauge for monitoring whether environmental outcomes are consistent with the goal of reaching global net zero, while also pointing out the best course of action in cases where they are not[15].

12 Ibid.

13 Renita D'souza, 'Perspectives on a green taxonomy for India' Observer Research Foundation (November 11, 2021) https://www.orfonline.org/expert-speak/perspectives-on-a-green-taxonomy-for-india/ accessed January 9, 2023

14 Saurabh Trivedi and Shantanu Srivastava, 'Fact Sheet: Green Taxonomies Explained' Institute for Energy Economics and Financial Analysis (August 31, 2022) https://ieefa.org/resources/fact-sheet-green-taxonomies-explained accessed January 9, 2023

15 Renita D'souza, 'Perspectives on a green taxonomy for India' Observer Research Foundation (November 11, 2021) https://www.orfonline.org/expert-speak/perspectives-on-a-green-taxonomy-for-india/ accessed January 9, 2023

Who are the Key Users?

World Bank had designed a guide in the creation of a common vocabulary for discussing climate resilience and the support of climate risk-related decisions in fundraising, lending, and investing activities titled "Developing a National Green Taxonomy: A World Bank Guide"[16] which tabled the illustrative uses of the taxonomy by appropriate players, which is reproduced below:

Main Actors	Potential Uses
Banks and Financial Institutions	• Originate and structure green banking products (such as loans, credits, and guarantees) more easily and consistently • Boost the efficiency of green lending and funding operations • Lower transaction costs through faster identification and verification of eligible assets • Reduce uncertainty and reputational risk • Understand and disclose exposure to sustainable investments as required by regulators
Financial Regulators	Help with the greening of the financial sector by: • Supporting regulatory interventions based on the taxonomy to encourage banks to lend to eligible green companies • Facilitating new climate- or sustainability-related reporting and disclosure guidelines for financial market actors or enhancing existing ones • Measuring financial flows toward sustainable development priorities at the asset, portfolio, institutional, and national levels • Avoiding reputational risk by preventing "green-washing"
Investors	• Identify opportunities that comply with sustainability criteria for high-impact investments • Disclose exposure to sustainable investments, as required by regulators • Understand the exposure of portfolios to green investments and design investment policies aligned with the preferences of clients and beneficiaries • Support investor engagement with investees with regard to business models and transition plans
Green/Sustainabilitybond issuers and other relevant actors, such as certifiers and verifiers	Identify eligible activities that can be financed more easily and consistently with relevant thematic bonds
Investors	• Identify opportunities that comply with sustainability criteria for high-impact investments • Disclose exposure to sustainable investments, as required by regulators • Understand the exposure of portfolios to green investments and design investment policies aligned with the preferences of clients and beneficiaries • Support investor engagement with investees with regard to business models and transition plans

[16] World Bank Group, 'Developing a National Green Taxonomy: A World Bank Guide' (June 2020) https://documents1.worldbank.org/curated/en/953011593410423487/pdf/Developing-a-National-Green-Taxonomy-A-World-Bank-Guide.pdf accessed January 9, 2023

Main Actors	Potential Uses
Policymakers	• Identify areas of underinvestment and bridge the funding gap • Facilitate the development of a pipeline of green projects in accordance with national priorities for environmentally sustainable development • Provide a reference for policymakers as they develop strategies to achieve national sustainable development commitments, such as those in the country's Nationally Determined Contribution (NDC) targets and Sustainable Development Goal (SDG) agendas, and improve associated systems for tracking and measuring finance flows
Others	Provide a consistent starting point for standard setters and product developers

In a nutshell, the upcoming framework of green taxonomy is going to affect all the players as listed above in the table and is not limited to only companies and investors. The current scenario was aptly described by Ban ki-Moon in the following words:

"Climate change does not respect border; it does not respect who you are – rich and poor, small and big. Therefore, this is what we call 'global challenges,' which require global solidarity."

Although we preach global solidarity, the international framework on the green taxonomy is a distant dream. All nations at their individual levels are working for this common cause which is no less than being on the same page, which is a necessity in today's times.

Conclusion

As is known to all India the 26th session of the Conference of Parties ("COP 26") enunciated its five nectar elements, also calls as Panchamrit in its climate action plan, as provided hereunder[17]:

i. Reach 500GWNon-fossil energy capacity by 2030.

ii. 50 percent of its energy requirements from renewable energy by 2030.

iii. Reduction of total projected carbon emissions by one billion tonnes from now to 2030.

iv. Reduction of the carbon intensity of the economy by 45 percent by 2030, over 2005 levels.

v. Achieving the target of net zero emissions by 2070.

Moreover, India is actively promoting Lifestyle for Environment ("LiFE") and has also got the opportunity to chair the G-20 Presidency whose theme stands "Vasudhaiva Kutumbakam" or "One Earth. One Family. One Future". Hence, these actions by the Government is sufficient to conclude that India will leave no stone unturned in executing its plans for a sustainable lifestyle for all and this green taxonomy is just the tip of the iceberg.

So, get ready and prepare yourself for the upcoming changes in your way of doing business. As rightly said by François Hollande:

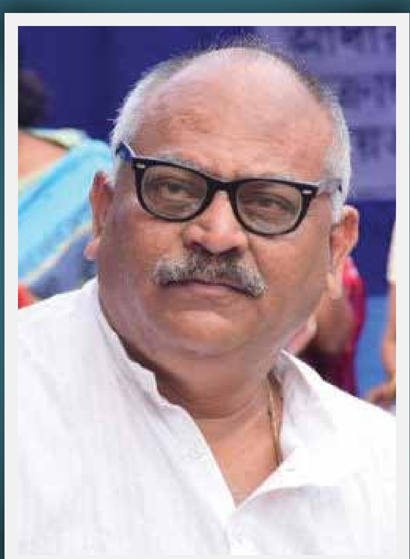
"We have a single mission: to protect and hand on the planet to the next generation."

Michael Porter

"Businesses must reconnect company success with social progress. Shared value is not social responsibility, philanthropy, or even sustainability, but a new way to achieve economic success. It is not on the margin of what companies do but at the center. We believe that it can give rise to the next major transformation of business thinking."

[17] PIB Delhi, 'India's stand at COP-26' (February 3, 2022) https://pib.gov.in/PressReleasePage.aspx?PRID=1795071 accessed January 9, 2023

INTERVIEW QUESTIONAIRE



Chandranath Sinha

Minister-in-Charge
Department of Micro, Small, and Medium Enterprises and Textiles

Q1. It is often cited that MSMEs flourish around a larger unit or anchor as mini-value chain suppliers and that they must be put in the care of large corporations to bring forth their truest potential. As a Minister-in-charge of MSME, what are your thoughts, and does the government have any plans to take action on the same?

Answer: According to recent figures, India's 63 million MSMEs account for close to 30 percent of the country's gross domestic product, and this indicates that the MSME sector is fast evolving (GDP). The industry already made up about half of its exports, and as of 2022, it had expanded by 37% annually (YoY). Given that MSMEs are the country's economic development drivers, the fact that 90% of them operate in the unorganized sector of the Indian economy is rather alarming. It is unappreciated when a country's progress is mainly dependent on an uncontrolled industry, which is why the MSME sector has to be formalized.

Practically speaking, the majority of MSMEs in the nation is run and managed by proprietors with a staff of 5–10 employees. Given that they hardly manage to survive, how can we expect these organizations to accomplish formalization on their own? In addition, the “Make in India” initiative has been highly successful for the Indian economy, and we are now working to accomplish “Make for the World” as well. It is necessary in such a situation to place MSMEs under the control of the larger corporations in the relevant industries so that they can adapt to the best industrial practices, product standardization in accordance with the industrial hallmarks, develop quality-driven products, and integrate themselves in the global supply chain ecosystem.

Q2. MSME Business Confidence Study released by digital lender NeoGrowth shows that 71 percent of MSME owners plan to include Sustainable Business Practices in 2023. What kind of practices can be seen to be adopted by the MSME sector?

Answer: Nowadays, citizens are quite active in terms of adopting healthy practices. Eliminating the usage of plastic is their primary goal in support of the same and as part of sustainable business practices. Programs to preserve energy and utilize renewable energy, plant trees, lower carbon emissions, use less plastic and paper, and control or limit air and water pollution are just a few examples of other sustainable business practices.

Q3. What steps are taken to digitize the MSME sector in West Bengal?

Answer: ISF-FIRST and the Confederation of West Bengal Trade Association (“CWBTA”) have signed a Memorandum of Understanding (“MoU”) to work together to promote CWBTA's component organizations and member base, navigating and expanding possibilities while also providing a favorable ecosystem for MSMEs. One of the West Bengal's biggest initiatives to help MSMEs become digital is now underway. We want to see a good presence of West Bengal's MSMEs in FIRST since this would enable them to address issues that are affecting them locally. We think addressing the problems facing MSMEs in the state would enable them to take advantage of the $7 billion e-commerce potential. The effort will be essential for MSMEs to future-proof their businesses by developing sustainable models that boost competitiveness and profitability as West Bengal typically accounts for 10% of trade volumes.

■Q4. What are the difficulties the MSME sector is facing in the present times?

Answer: India is pitching for a sustainable friendly way of conducting business. Large businesses and corporate houses are able to easily change their ways of doing business but it is not easy for the MSME sector to change their methods of doing business as they belong to the most downtrodden society of the economy. Hence, for MSMEs, there is still a growing need to improve the ease of doing business, particularly with regard to their digital transformation, online registration procedure, raising of funds, and compliance with different regulatory duties. This would enable them to expand their businesses in a sustainable way.

■Q5. What shall be the priorities of the MSME sector in the current year?

Answer: The MSME Ministry is pushing technology forward, increasing recruiting, and emphasizing sustainability. The top priority will be to digitize accounts and payments, improve social media presence, and promote online sales. As part of sustainable business practices, eliminating the use of plastic is their top objective.

■Q6. The MSME sector is looking forward to creating job openings in huge numbers in 2023. What qualifications should the proposed employees have from the perspective of the requirements of the sector?

Answer: The nation's youth, who are capable of bringing creativity and technology in countless ways, are the ones we look forward to recruiting. With digitization being our top priority, it is essential that the youth engage with the MSME sector and assist them in growing their social media presence for marketing, facilitating an increase in online sales, managing the entity's online banking, tracking the recently launched government schemes, etc. Each autonomous MSME may do miracles and accelerate the industry's rate of innovation if it has 2-3 young, educated personnel.

[Snippet 1]: The POSH Annual Report: Is Your Organization Cognizant?

Employers are obliged by the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act to submit an annual report to the District Officer. This report is known as a PoSH annual report. The efforts that the employer has made to comply with the PoSH Act's requirements are detailed in the PoSH annual report. The steps they have taken to stop and handle workplace sexual harassment are described. Details on how many and what kind of sexual harassment complaints the PoSH Committee received and dealt with must be included in the annual report. It must also state any responses to such complaints that have been made.

The report ought to include details on any training or awareness campaigns the employer may have run. These initiatives should aim to inform staff members about the PoSH Act's obligations. Additionally, they must assist the workers in understanding their legal options in the event of sexual harassment.

If an employer doesn't submit their PoSH yearly report, the District Officer may take the necessary measures. This may include sending them a warning asking them to do so or fining them. Depending on the specifics of the situation, the fine might reach INR 50,000. In addition to the fine, not submitting the PoSH yearly report might harm the employer's image and the morale of its workforce. The reputation of the company may suffer, and employee trust and engagement may decrease if the PoSH Act's requirements are not followed.

[Snippet 2]: Guidelines for Curbing the Publication of Fake Consumer Reviews

Indian Standard (IS) 19000:2022, "Online Consumer Reviews — Principles and Requirements for their Collection, Moderation, and Publication," was introduced by the Department of Consumer Affairs and the Bureau of Indian Standards (BIS) as a framework for safeguarding and protecting consumer interest from false and misleading reviews in e-commerce. All online platforms that post user reviews will be subject to the criteria. Integrity, accuracy, privacy, security, transparency, accessibility, and responsiveness serve as the standard's guiding principles. The standard lays forth clear obligations for both the review author and the review administrator. These are as follows: for the review author, verifying agreement with the terms and conditions; for the review administrator, protecting personal information; and for staff training.

All e-commerce platforms would first be free to voluntarily comply with the norm. Once mandated, if necessary, any company that violates the requirements may be deemed to be engaging in unfair commercial practices or violating consumers' rights, and as such, consumers may file complaints with the National Consumer Helpline, consumer commissions, or the CCPA.

[Snippet 3]: Ambit of Government Company Expanded

The Securities Contracts (Regulation) Amendment Rules, 2022 were enforced on January 2, 2023, to amend the definition of 'government company' and sub-rule (6) of Rule 19A of the SCR rules. Sub-rule (c) of Rule 2 originally defined the government company as follows:

> "(c) "Government company" means a company in which not less than fifty-one percent of the share capital is held by the Central Government or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments"

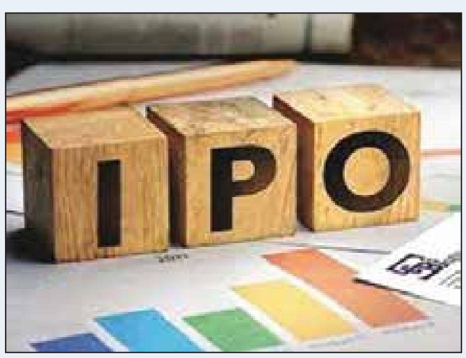
Pursuant to this amendment, the amended definition of the government company stands as follows:

> "(c) "Government company" means a Government company as defined in clause 45 of section 2 of the Companies Act, 2013 (18 of 2013)"

The definition supplied by clause 45 of Section 2 of the Companies Act, 2013 is reproduced hereunder:

> "Government company means any company in which not less than fifty-one percent. of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company"

Therefore, the SCR rules now also encompass subsidiaries of a government company with the ambit of a government company.



[Snippet 4]: Prefiling Explained

SEBI had notified SEBI (ICDR) (Fourth Amendment) Regulations, 2022 last year wherein it introduced a mechanism of pre-filing of offer documents which shall act as an alternative to the current regime of IPO. In order to facilitate public companies filing their draft offer documents with SEBI and stock exchanges on a confidential basis ("Pre-Filed Document") for initial public offerings (IPOs) listed on the main board, an alternative process has been introduced. For this purpose, a new chapter (Chapter IIA) has been added to the SEBI ICDR Regulations.

Keeping commercially sensitive information private until the issuers are absolutely certain they wish to proceed with the transaction is one benefit of this method. Additionally, it enables regulators and issuers to work together to address any complex issues pertaining to the issuer or its sector before the disclosure is made public and ensures that the regulator's input and observations are incorporated into the document that is made available for public review. Some noteworthy amendments have been introduced are mentioned hereunder:

Direct communication between Issuer company and QIBs: In a novel and encouraging development, issuer businesses will now be explicitly permitted to communicate with qualified institutional buyers ("QIBs") for the marketing of the IPO following the filing of Pre-Filed Document, basis information included in Pre-Filed Document. The issuer and lead managers will be required to create a list of QIBs who have taken part in such interaction(s), as well as to submit to SEBI an indication that the interaction with the QIBs has ended ("Limited Interaction Indication"). In order to prevent the contents of the Pre-Filed Document from becoming public knowledge, this modification will necessitate that the issuer and the lead managers implement sufficient safeguards. Non-disclosure agreements might need to be signed before such discussions, just like in other jurisdictions. Additionally, this will enable insightful comments on the issue's viability.

Additional Prongs listed for receipt of SEBI observations: For the purpose of receiving SEBI's observations on the Pre-Filed Document, there are now two additional prongs that must be met: I the date of the Limited Interaction Intimation; or (ii) the date on which SEBI is notified of the conversion of any outstanding convertible securities or the exercise of any other right that would entitle any person with an option to receive equity shares (other than any convertible securities or rights currently permitted under Regulation 5(2) of the SEBI Rules). Depending on the transaction dynamics, this could lengthen the review process and result in more observations being issued on the Pre-Filed Document while also giving issuers more control over the process because the timing of QIB interactions, etc., will be primarily determined by commercial factors.

Addition of a ‘cool-off’ period: There is now a "cool-off" period of seven working days between QIB interactions and the submission of the U-DRHP-I (“Updated Draft Red Herring Prospectus I”), which is an intriguing change. For at least 21 days following the date of submission, a U-DRHP-I shall be open to public comment.

The U-DRHP-I filing date will now serve as the start date for the publicity restrictions that apply post-DRHP filing under a Chapter II file.

Filing of U-DRHP II: Following the 21-day period, the lead managers shall provide SEBI with details of the comments received and any resulting document revisions. The submission of a second updated draft offer document ("U-DRHP-II") with SEBI will be necessary to be made prior to filing a red herring prospectus with the Registrar of Companies ("RHP"), similar to the conventional procedure of an updated draft red herring prospectus filing today under Chapter II.

Significant Diminutions and Increased Amenability: Despite the introduction of the Chapter IIA regime, SEBI appears to be aware that the Pre-Filed Document may be filed at a later time even if certain features of the matter are not yet entirely clear. As a result, the issuer company will be allowed to: (i) Continue with convertibles/options: This would apply to outstanding convertible securities and any other right to receive equity shares of the issuer company, with the exception of any permitted ESOPs or fully paid up outstanding convertible securities, which may continue to be held in accordance with Regulation 5(2) of the SEBI ICDR Regulations; and (ii) issue-specific convertible securities under Regulation 5(2) of the SEBI ICDR Regulations.

Additionally, the issuer is allowed to make substantial changes to the issue structure (up to 50% of the fresh issue, as opposed to the 20% permissible under the Chapter II regime) and the fresh issue's objects (up to 50% in some circumstances, as opposed to 20% under the current regime). The current refiling triggers for Chapter II filing will take effect following the filing of the U-DRHP-I.

Another positive change is that the requirements for determining whether stocks are eligible for an offer for sale ("OFS") or promoter contributions only apply at the time the U-DRHP-I is filed, not at the time the Pre-Filed Document is filed. This will give issuers the freedom to file a Pre-Filed Document without having to wait for the fulfilment of OFS requirements or promoter contribution requirements.

Increased Validity Period for Observations: If the U-DRHP-I is filed within 16 months of the date of SEBI observations, the Chapter II regime permits an issuer to open a public offer for subscription within 18 months of the date of SEBI observations on the Pre-Filed Document. The pre-existing system allowed for SEBI's final observations on the DRHP to be valid for a full year.

Maxim Dose

"Business Judgment Doctrine"

A legal principle known as the "Business Judgment Rule" aids in protecting a corporation's board of directors (B of D) from baseless legal claims over how it conducts business. The rule, which is a cornerstone of common law nations, holds that boards are presumptively acting in "good faith," or in accordance with the fiduciary principles of loyalty, caution, and care that directors owe to stakeholders. The courts will not examine or contest the board's judgments in the absence of proof that the board has flagrantly broken some code of conduct.

The Rule is not applicable when the board of directors:

- Committed fraud
- Corporate squander
- Participated in self-dealing
- Influenced by a conflict of interest while making judgments
- Acted dishonestly or with ulterior motives
- Gross negligence that included failing to take into account all relevant, reasonably available information is a breach of their duty of care.

Quick Guide

Strike off a Company: Modus Operandi

There exists a procedure for everything that happens in a company from its inception to its closure. This article relates to the procedure involved in the closure of the company. There are two ways to close a company:

1. Strike off company
2. Winding up of company

Winding up v/s Strike off

An action that dissolves a firm is known as "winding up." While striking off a company means the closing of a defunct company i.e., a company that never commenced business or which is not carrying on business and has either no assets or has such assets as shall not be sufficient to meet the liquidation cost. The former entails appointing a liquidator to oversee the whole liquidation process, including the realization and distribution of the company's assets and the payment of outstanding debts, whereas the latter is a simple procedure discussed in detail in this article.

Striking off in its literal sense means removing the name of a dormant company from the Registrar of Company. Striking off is a more affordable option for liquidating a business with no or little debt compared to winding up.

The Companies Act 2013 permits two methods of strike-off: strike-off by the ROC (Registrar of Companies) under Section 248(1) and strike-off by a company acting independently under Section 248(2)[18].

Grounds for Strike off[19]

Following are the grounds for strike off:

- The company hasn't commenced its business within one year since its inception.
- The Company hasn't conducted any operations or conducted any business for the two financial years prior, and during that time, it hasn't applied to become a dormant company.
- Failure to submit Form INC-20A in accordance with Section 10A within 180 days after incorporation.

Restrictions on making Application for Strike Off as per Section 249

There are certain restrictions on making an application for strike off to ROC, which is as follows:

Companies are prohibited from submitting petitions for strike-off if, during the previous three months, they have[20]:

- Changed their name; or
- Moved their registered office to a different state; or
- Made a disposal/sale/transfer for the value of property or rights held by it; or
- Undertaken any additional activity outside what is required or convenient for submitting an application under the relevant provision; or
- Submitted a request to the Tribunal for the granting of a compromise or an arrangement, however no agreement on the matter has

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[18] Sreeram Viswanath, 'Strike off of company' (India Filings) https://www.indiafilings.com/learn/strike-off-of-company/ accessed 2 January 2023

[19] CS Vanaja, Monica Thakur, 'Strike Off/Closure Of Company Pursuant To Section 248 Of Companies Act, 2013' (20 November 2019) https://www.rna-cs.com/strike-off-closure-of-company-pursuant-to-section-248-of-companies-act-2013/ accessed 3 January 2023

[20] Cs Nisha Sarayan, 'Strike off a Company' (TaxGuru, 12 March 2022) https://taxguru.in/company-law/strike-company.html#:~:text=A%20Company%20goes%20for%20strike,of%20Strike%20off%20of%20company. Accessed 2 January 2023

yet been reached; or

- Been voluntarily or involuntarily wound up under Chapter XX of the Insolvency and Bankruptcy Code (IBC) in 2016.

Strike Off by ROC u/s 248(1) of the Companies Act, 2013

- If the Registrar of Companies (ROC) has a justifiable reason, he may send a notice in Form STK-1 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 to the Company and each of its directors informing them of his intention to have the Company's name removed from the record and requesting that the Company send its representations and any necessary supporting documentation within 30 days of the date of the notice[21].
- Notice will be issued by ROC and the same shall be published in the Official Gazette and placed on the MCA website to seek objection from the public within 30 days from the date of notice in Form STK- 5.
- In case of no objection is received or it is resolved, ROC will strike off the Company from the register and the Company will be dissolved from that date.

This process is also called as Compulsory removal of a name from the Registrar of Companies[22].

Strike Off on the Company's Accord u/s 248(2) of the Companies Act, 2013

A company may file an application Suo moto to the Registrar of Companies for striking off its name from the register hence this is also known as a voluntary strike-off. Provided the Company shall file overdue returns up to the end of the F.Y. in which it ceased to carry out its business operations. (Amendment dated - May 10, 2019)

Checklist for Voluntary Strike Off :

1. Convene a duly called Board Meeting for passing a Board resolution for the purpose of Striking off the name of the Company and authorizing any director of the Company to apply to the Registrar of Companies.
2. After passing of Board resolution the Company shall extinguish all the liabilities before making an application for strike off.
3. Call, Held, and Conduct an Annual General Meeting / Extra-Ordinary General Meeting of shareholders and pass a Special Resolution for striking off the name of the Company.
4. Company has to then file the e-form MGT-14 within 30 days of passing of the resolution.

   *Note – if the company is regulated by any other authority, then the consent of such authority must also be obtained.
5. Application to ROC in Form STK- 2 to be filed by the Company (Government filing fees of INR 10,000) along with the following documents:
   - Indemnity Bond on Form STK-3, properly notarized by each director;
   - A statement of accounts in Form STK- 8 containing assets and liabilities of the company made up for not more than 30 days before the date of application and certified by a Chartered Accountant;
   - An affidavit signed by every director of the corporation in Form STK-4;
   - A statement with respect to pending litigations, if any involving the Company; and
   - CTC of Special Resolution (duly signed by every director of the company).

What happens after submission of application for Strike Off[24]:

- The ROC must issue a public notice in Form STK-6 upon the receipt of an application.
- Any objections to recommended strike-off must be submitted within 30 days. The notification must be posted on the Ministry of Corporate Affairs website, published in the Official Gazette, published in a reputable English daily, and at least one local newspaper where the company's

[21] Sreeram Viswanath, 'Strike off of company' (India Filings) https://www.indiafilings.com/learn/strike-off-of-company/ accessed 2 January 2023

[22] Ibid.

[23] Sreeram Viswanath, 'Strike off of company' (India Filings) https://www.indiafilings.com/learn/strike-off-of-company/ accessed 2 January 2023

[24] Ajay Sethi, 'Strike off Name from ROC' (Kaanoon) https://www.kaanoon.com/282627/striking-off-name-from-roc accessed 2 January 2023

registered office is located.

- ROC shall simultaneously intimate the concerned regulatory authorities regulating the company and having jurisdiction over the company, about the proposed action of removal or striking off the names of such companies and seek objections if any.
- After following all the necessary steps, the ROC must revoke the company's name and dissolve it by publishing a notice in the official gazette using the STK-7 Form.
- The Company will be dissolved as of the date specified therein upon this notice's publication in the Official Gazette. Additionally, it must be posted on the MCA's official website.
- The Company shall cease its operations as a company from the date of such dissolvement, and the Certificate of Incorporation issued to it by the ROC shall be deemed to have been cancelled, except for the release of any outstanding debts or obligations.

Officially dissolving a corporation typically takes at least 3 months, however, this time frame can vary greatly depending on how complicated the procedure is.

Companies that ROC under section 248(1) cannot strike off[25]:

- Section 8 Companies.
- Companies that are listed or that have been delisted for failing to comply with listing rules or with any other legislative laws.
- Vanishing companies.
- Companies where inspection or investigation is ordered or investigation are pending in any court of law.
- Companies where notice u/s 206 or 207 has been issued by Registrar or Inspector and its decision is pending.
- Organizations that have a pending application for compounding with a competent authority.
- Organizations who have unpaid public deposits or have fallen behind on payback.
- Pending Charges for satisfaction.
- Companies against which investigation for offense is pending in any court of law.

We have discussed the procedure for striking off a company, but can a company be revived once it's struck off from the Register of Companies? Well, the answer to it is yes.

Appeal to Tribunal Against Dissolution of Company

Any person who feels wronged by the ROC order notifying them that a business has been dissolved in accordance with Section 248 (Strike off) of the Act may appeal the decision to the Tribunal within three years of the ROC order's date. The appeal must be submitted within three years after the date of the Registrar's order in cases of obligatory striking off by the Registrar, and the statute of limitations is twenty years in cases of voluntary striking off.

The procedure for filing an appeal is as follows:

- Draft an appeal u/s 252, in Form- NCLT 9, with any adjustments that may be required.
- Serve copies of the appeal to the Income Tax department and the Concerned ROC.
- Submit the original appeal to NCLT.
- Show up to the NCLT hearing on the day specified by NCLT, produce evidence that would be adequate to support the resurrection of the company, and refute ROC's assertion that the company has been out of operation for the previous two years.
- The NCLT must issue an order reinstating the name of a firm to the register of companies after hearing from both sides.
- Within 30 days from the date of the order, file a copy of the order with the Registrar of Companies.
- Within the time frame that the Tribunal may specify, submit any outstanding financial statements and annual reports to the Registrar.
- The company's status will then be changed from "Strike-off" to "Active" by the Registrar of Companies.

To put it succinctly, one must bear in mind the aforementioned procedure when entangled in such a situation.

[25] Sreeram Viswanath, 'Strike off of company' (India Filings) https://www.indiafilings.com/learn/strike-off-of-company/ accessed 2 January 2023

[26] Team Ebizfiling, 'FAQs on Strike Off Company in India' (EbizFiling, 4 January 2022) https://ebizfiling.com/blog/faqs-on-strike-off-company-in-india/ accessed 3 January 2023

Legal Stalker

CORPORATE LAW

i. **Recoveries under SARFAESI prevail over that of MSMED**

The Apex Court in Kotak Mahindra Bank Limited Vs Girnar Corrugators Pvt. Ltd. & Ors. Noted that, unlike Section 26E of the SARFAESI Act, the MSMED Act does not grant secured creditors any priority over their debt obligations. Furthermore, it was decided that in order to recover the money due under the award or decree issued by the Facilitation Council, recoveries under the SARFAESI Act with regard to the secured assets would take precedence over recoveries under the MSMED Act.

ii. **Automatic grant of ESIC No.**

ESIC registration numbers are automatically assigned to newly created Public Limited, Private Limited, and One Person Companies ["Companies"] as of February 15, 2020. Regardless of whether these Companies fall within the scope of the threshold limits as applicable, once these Companies are registered under the Employee State Insurance Act, 1948 ["ESI Act"], they will be required to comply with the ESI Act's provisions by law. This is because their registration becomes active automatically on generation from the date of incorporation. The Employee

State Insurance Corporation now has the added difficulty of determining whether or not these Companies fall beneath the criteria. Employee State Insurance Corporation issued a circular in response to the aforementioned problem on December 22, 2022, which states that companies that received default registration under the ESI Act upon Incorporation through the MCA portal are exempt from the law's requirements for a period of six months following the date of registration or until they reach the thresholds set forth in the ESI Act, whichever is earlier.

Every newly created company must therefore maintain track of whether or not the applicable thresholds are met, and if not, must make sure to alter its applicability status to "Dormant" at the end of every six-month period after they gave their earlier notification.

SECURITIES LAW

i. **SEBI proposes a regulatory framework for REITs and InvITs to issue Depository Receipts**

A consultation paper on the proposed regulatory framework to permit the issuance of depository receipts (DRs) in lieu of units of Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs) established in India has been released by SEBI. Market participants and stakeholders are asked to respond by the latest February 21, 2023.

COMPETITION LAW

i. **Recommendations of Committee on Anti-competitive Practices by Big Tech Companies**

Parliamentary Standing Committee on Finance tabled its 53rd report before the Parliament on December 22, 2022 titled as "Anti-Competitive Practices by Big Tech Companies". The committee heard all the big tech companies, various industrial associations and the CCI. In addition to creating a specialist Digital Markets Unit inside the CCI, this paper suggested passing a Digital

Competition Act. The Committee further advised that, in order to address the gatekeeper issue, major tech firms not stop users from selling the same goods or services to end users directly or through third-party online intermediary services at varying rates or terms. The Committee further advised that, as opposed to the existing ex-post review system, the competitive behaviour of major technology corporations should be assessed ex-ante, before the market becomes monopolised.

INSOLVENCY

i. Unregistered Partnership firms prohibited from initiating insolvency proceedings

An unregistered Partnership Firm cannot initiate insolvency proceedings under IBC, the National Company Law Tribunal ("NCLT"), Kochi Bench said in a decision on an application made in The Bangalore Sales Corporation v. Sark Spice Products Pvt. Ltd.

ii. Adjudicating Authority's Role Narrowed Down

In ruling on an appeal filed in Mathuraprasad C. Pandey & Ors. V. Partiv Parikh & Anr., the National Company Law Appellate Tribunal ("NCLAT"), Principal Bench, held that when a Resolution Plan is presented to the Adjudicating Authority for approval, it is clearly within the legislative mandate to either approve or reject the Resolution Plan. IBC does not contain any language allowing the Adjudicating Authority to modify or revise the Resolution Plan.

The Bench stated that a resolution plan must have the Adjudicating Authority's approval if it complies with Sections 30 and 31(1) of the IBC. The term "shall" has been added to Section 31 of the IBC with the caveat that the Adjudicating Authority must be convinced that the resolution plan has measures for its efficient execution.

In addition, Section 31(2) of the IBC gives the Adjudicating Authority the authority to reject the resolution plan if it determines that it does not comply with Section 31(1) of the IBC. The Bench said that it is evident that the resolution plan must be approved or rejected by law. The resolution plan does not, however, include any provisions for modification or amendment.

iii. Trust eligible to become a Resolution Applicant

There is no fetter, embargo, or any legal impediment for a Trust to become a Resolution Applicant, ruled the NCLAT Chennai Bench in an appeal filed in M/s. Aswathi Agencies v Bijoy Prabhakaran Pulipra & Ors. The Bench noted that a "Person" is defined in Section 3(23)(d) of the Insolvency and Bankruptcy Code, 2016 ("IBC"), and a Trust is included in this definition. Therefore, a Trust may apply for a resolution without being subject to a fetter, embargo, or legal restriction.

TAX

i. Income earned by Domain Name Registrar not treated as 'Royalty'

A domain name registrar acts as a facilitator and has no ownership claim over the domain name that it registers. As a result, the money derived by it from the registration of domain names is not taxed as "Royalty. The ITAT, Mumbai held that by providing domain name registration services to clients, the assessee essentially served as a middleman and claimed no ownership of the domain name in question. So, it came to the conclusion that the assessee/domain name registrars did not give the clients any rights to the domain name. This decision was given in the case of PDR Solutions FZC versus DCIT.

ii. Clarification of West Bengal AAR on the provision of services with respect to parking spots

According to the West Bengal Authority for Advance Ruling (AAR), the provision of services for the right-to-use parking spots is subject to an 18% GST. The Authority noted that the provision of services for the privilege of using a parking spot is a separate supply and should not be interpreted as a composite provision of services for the building of residential apartments. The AAR ruled that any remaining parking space after it has been distributed among the intended buyers must be made available to allottees who want more parking space. The supply cannot be regarded as naturally being packaged with construction services because it is an entirely different service.

iii. **Clarification of West Bengal AAR on human health and social care services**
The West Bengal Authority for Advance Ruling (AAR) has decided that the applicant's frequent medical monitoring services for senior citizens delivered to their homes, together with additional logistical support, are subject to an 18% GST. According to the AAR, the applicant's services can be categorized as "human health and social care services" and are subject to an 18% tax rate. The Authority noted that if a medical facility, a licensed physician, or paramedics perform the healthcare services, then the supply is free from taxation. The application does not fit into any of the supplier categories, and as a result, the services that the applicant offers are not exempt services.

iv. **Apex Court absolved the NBFCs and Leasing Companies from the liability to pay tax on the interest component**
The Supreme Court has held that non-banking finance and leasing companies are not liable to pay tax on the interest component included in the hire-purchase installment paid under the hire-purchase agreement. M/S. Muthoot Leasing and Finance Limited and Another Vs. Commissioner Of Income Tax Civil Appeal Nos. 10201-10202 Of 2010

v. **Proposal for a New Law to relieve taxpayers from the unresolved tax disputes**
The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, an Indian law that aims to relieve taxpayers by giving them a single opportunity to resolve unresolved tax disputes, is being modified by the Jan Vishwas (Amendment of Provisions) Bill, 2022, a proposed piece of legislation. The primary goal of the Bill is to decriminalize 183 offences scattered throughout 42 pieces of law overseen by 19 Ministries, improving and strengthening India's economic environment. Among the several Acts covered by the Bill are the Trade Marks Act of 199', the Railways Act of 1989, the Prevention of Money Laundering Act of 2002, the Patents Act of 1970, and the Drugs and Cosmetics Act of 1940.

ARBITRATION

i. **Introduction of E-filing of arbitration applications**
A web-based platform for arbitration and appellate arbitration has been made available online by Multi Commodity Exchange of India Limited. Additionally, this platform has been connected with its current "Investor Grievance Redressal System (IGRS)" that is based online. The online portal will assist investors and exchange members in electronically filing their Arbitration and Appellate Arbitration grievances and in keeping track of the progress of their resolution.

This is another move in the direction of making business easier, which will make it easier to file arbitration applications and rejoinders. The tool will hasten the arbitration of complaints from investors and members. It will make information about open and closed Arbitration and Appellate Arbitration cases easier to access. It is intended to serve as a comprehensive source of knowledge on these topics.

ii. **New Delhi International Arbitration Centre Renamed**
The New Delhi International Arbitration Centre will now be known as the India International Arbitration Centre according to a bill that was approved by parliament recently.

Union Law Minister Kiren Rijiju led the passage of the New Delhi International Arbitration Centre (Amendment) Bill, 2022, in the Rajya Sabha. The Lok Sabha already approved the bill that would have expanded this to enable the use of other kinds of ADR in addition to arbitration. This bill will assist India in becoming a popular choice for international arbitration. India is still not a major center for arbitration, but minor nations and cities have taken the lead in this field.

India's First Budget For Amrit Kaal: Quick Recap

Vision:

Creating a technology-driven and knowledge-based economy with strong public finances, and a robust financial sector.

Economic Agenda:

1. Facilitating ample opportunities for citizens, especially the youth, to fulfill their aspirations;
2. Providing strong impetus to growth and job creation; and
3. Strengthening macro-economic stability

Transformative opportunities:

1. Economic Empowerment of Women through the introduction of massive producer companies housing thousands of employees for 81 lakh self-help groups formed under the Deendayal Antyodaya Yojana National Rural Livelihood Mission. Provision of assistance for the supply of raw materials, and enhancement of design, quality, branding, and marketing.
2. Launch of PM VIshwakarma KAushal Samman (PM VIKAS) for the underprivileged strata of society to enrich the quality, scale, and reach of the products through advanced skill training, brand promotion, imparting knowledge on modern digital techniques and efficient green technologies, social security, digital payments, and integration of local and global markets.
3. Active promotion of the tourism sector through government programs coupled with public-private partnerships.
4. Acceleration of Green growth and creation of green job opportunities at large scale

Initiatives to Attain: Saptarishis

1. Inclusive Development:

a. Agriculture and Cooperation:

- Building an accessible, inclusive, farmer-centric digital public infrastructure
- Establishment of Agricultural Accelerator Fund to encourage innovated agri-startups in rural areas
- Atmanirbhar Clean Plant Program to boost the availability of disease-free, quality planting material for high-value horticultural crops at an outlay of ` 2,200 crores.
- Making India a global hub for Millets: Shree Anna, support extended to the Indian Institute of Millet Research, Hyderabad as the Centre of Excellence.
- ₹20 lakh crore agricultural credit targeted at Animal

Husbandry, Dairy, and Fisheries Sector.

- Introduction of PM Matsya Sampada Yojana with a targeted investment of ` 6,000 crores to boost the fisheries sector.
- Computerisation of 63,000 Primary Agricultural Credit Societies (PACS) with an investment of ` 2,516 crores.
- Preparation undergoing for setting up a National Cooperative Database for country-wide mapping of cooperative societies.
- Set up of massive decentralized storage capacity to realize remunerative prices through sales at appropriate times

b. **Health:**

- Establishment of 157 new Nursing Colleges.
- Mission to eliminate Sickle Cell Anaemia by 2047 will be launched.
- Launch of a new program to facilitate medical and pharmaceutical research
- Joint Public and Private Medical research to be encouraged via select ICMR labs

c. **Education and Skilling:**

- Revamped Teachers' Training via District Institutes of Education and Training
- National Digital Library to be set up for Children and Adolescents
- States will be encouraged to set up physical libraries at Panchayat and Ward levels
- Measures adopted for building a reading culture.

2. Reading the Last Mile:

- Launch of Aspirational Blocks Programme covering 500 blocks for saturation of essential government services
- Launch of Pradhan Mantri PVTG Development Mission with ₹15,000 crore corpus for providing basic amenities and sustainable livelihood opportunities to Scheduled Tribes.
- 38,800 teachers to be recruited for 740 Eklavya Model Residential Schools serving 3.5 lakh tribal students
- Financial assistance to the tune of ₹5300 crore granted for sustainable micro irrigation in drought-prone regions of Karnataka
- Establishment of Bharat Shared Repository of Inscriptions (Bharat SHRI) for digitization of one lakh ancient inscriptions in the first stage
- Outlay for PM Awas Yojana is being enhanced by 66 percent to over ` 79,000 crores.

3. Infrastructure and Investment:

- Increased capital investment outlay by 33.4% to ₹10 lakh crore
- The 'Effective Capital Expenditure' of the Centre is budgeted at 13.7 lakh crore, which will be 4.5 percent of GDP.
- Continuation of a 50-year interest-free loan to State Governments to incentivize infrastructure investment with a significantly enhanced outlay of 1.3 lakh crore.
- Enhancing opportunities for private investment in Infrastructure
- Highest every capital outlay of ₹2.4 lakh crore for Railways.
- 100 critical transport infrastructure projects identified for end-to-end connectivity for ports, coal, steel, fertilizer, and food grain sectors with a total investment of 75,000 crores inclusive of 15,000 crores from private sources.
- Encouraging to transform into sustainable cities of tomorrow.
- Establishment of Urban Infrastructure Development Fund (UIDF) to create urban infrastructure in Tier 2 and 3 cities.
- Enabling 100 percent mechanical desludging of septic tanks and sewers to transition from manhole to machine-hole mode.

4. Unleashing the Potential- Trust Based Governance:

- Launched iGOT Karmayogi, to provide continuous learning opportunities for lakhs of government employees to upgrade their skills and facilitate a people-centric approach.
- Establishment of 3 specialized AI Centres in educational institutes for realizing the vision of "Make AI in India and Make AI work for India".
- National Data Governance Policy to be introduced to enable access to anonymized data.
- Simplification of the KYC process via adopting a 'risk-based' instead of a 'one size fits all' approach.
- PAN will be used as the common identifier for all digital systems of specified government agencies.
- Establishment of a Unified Filing Process to file information on a common portal and share information with other agencies as per the filer's choice.
- Vivad se Vishwas I- Relief for MSMEs through government backing 95% of the forfeited amount for the failure of contract execution during Covid.
- Launch of E-courts Phase-III Project with a capital outlay of ₹7,000 crores.
- Setting up of an Entity DigiLocker for use by MSMEs, business houses, and charitable trusts for storing and sharing information.
- Setting up 100 labs for 5G services-based application development.
- R&D grant for Lab Gown Diamonds sector for 5 years to one IIT.

5. Green Growth:

- Target to reach an annual production of 5 MMT by 2030 under National Green Hydrogen Mission.
- Corpus of ₹35,000 crores for priority capital investments towards energy transition and net zero objectives, and energy security.
- Battery Energy Storage Systems with a capacity of 4,000 MWH will be supported with Viability Gap Funding.
- Construction of Inter-state transmission system for Renewable Energy Evacuation and Grid Integration of 13 GW renewable energy from Ladakh.
- Green Credit Programme to be notified under Environment Protection Act to incentivize sustainable actions.
- PM Programme for Restoration, Awareness, Nourishment, and Amelioration of Mother Earth (PM PRANAM) will be launched to incentivize States and Union Territories to promote alternative fertilizers and balanced use of chemical fertilizers.
- 500 new 'waste to wealth' plants under GOBARdhan (Galvanizing Organic Bio-Agro Resources Dhan) scheme will be established for promoting a circular economy.
- Setting up 10,000 Bio-Input Resource Centres to facilitate 1 crore farmers to adopt natural farming.
- Mangrove Initiative for Shoreline Habitats & Tangible Incomes (MISHTI) to be taken up for mangrove plantation along the coastline.
- Promotion of Battery energy storage systems
- Amrit Dharohar to be implemented for optimal usage of wetlands.
- Promotion of Coastal shipping for energy-efficient transportation.
- Allocation of funds for the replacement of old polluting vehicles.

6. Youth Power:

- Launch of Pradhan Mantri Kaushal Vikas Yojana 4.0 with coverage of new-age courses such as coding, AI, robotics, mechatronics, IOT, 3D printing, drones, and soft skills.
- Setting up 30 Skill India International Centres to prepare the youth for international opportunities.
- Launch of a unified Skill

India Digital platform for enabling demand-based formal skilling, linking with employers including MSMEs, and facilitating access to entrepreneurship schemes.

- Rolling of pan-India National Apprenticeship Promotion Scheme to provide stipend support to youth.
- Selection of 50 destinations through challenge mode to be developed as a complete package for domestic and foreign tourists.
- States will be encouraged to set up Unity Malls for the promotion and sale of their own ODOPs (one district, one product), GI products, and other handicraft products.

7. Financial Sector:

- Expanded corpus under a revamped scheme to enable additional collateral-free guaranteed credit of ₹2 lakh crore.
- Setting up of National Financial Information Registry to enable efficient lending, promote financial inclusion, and enhance financial stability.
- Initiatives to promote business activities in GIFT IFSC introduced.
- Creation of more trained professionals in the Securities Market via the award of educational certificates to further capacity building.
- Setting up a Central Data Processing Centre for the handling of administrative work under the Companies Act.
- Mahila Samman Savings Certificate, a one-time new small savings scheme introduced for a 2-year period with a deposit facility of up to ₹2 lakhs for women.
- Enhanced maximum deposit limit for senior citizens savings scheme from ₹15 lakh to ₹30 lakh.
- Enhanced maximum deposit limit for Monthly Income Account Scheme from ₹4.5 lakhs to ₹9 lakhs for a single account and from ₹9 lakhs to ₹15 lakhs for a joint account.
- Grant of 50 year interest free loan to states to be spent on capital expenditure for 2023-24.
- Fiscal deficit of 3.5% of GSDP allowed for States (0.5% tied to Power sector reforms).

Tax Updates:

1. Direct Tax:

Changes in New Tax Regime

The default tax system has been replaced by new one. To make the new tax system more appealing, the administration has implemented 5 crucial steps. The previous tax system is still an option for taxpayers, though.

Change in new tax regime slabs for FY 2023-24 (AY 2024-25):

Income range	Income tax rate
Up to Rs. 3,00,000	Nil
Rs. 300,000 to Rs. 6,00,000	5% on income which exceeds Rs 3,00,000
Rs. 6,00,000 to Rs. 900,000	Rs 15,000 + 10% on income more than Rs 6,00,000
Rs. 9,00,000 to Rs. 12,00,000	Rs 45,000 + 15% on income more than Rs 9,00,000
Rs. 12,00,000 to Rs. 1500,000	Rs 90,000 + 20% on income more than Rs 12,00,000
Above Rs. 15,00,000	Rs 150,000 + 30% on income more than Rs 15,00,000

Under the new tax system, a tax credit is available on income up to Rs 7 lakhs. Accordingly, under the new tax system, you are exempt from paying tax if your taxable income is less than 7 lakhs.

In line with the new tax law, there is also a standard deduction of Rs. 50,000.

People earning more than Rs 5 crore will now be subject to a 25% surcharge instead of the previous 37% maximum under the new tax system. Their tax rate is reduced from 42.74% to 39% as a result of this action.

Presumptive Taxation Limits Revised for FY 2023-24:

Category	**Previous limits**	**Revised limits**
Sec 44AD: For small businesses	Rs 2 crore	Rs 3 crore*
Sec 44ADA: For professionals like doctors, lawyers, engineers, etc.	Rs 50 lakh	Rs 75 lakh*

*The increase in limitations is contingent on the requirement that 95% of the proceeds come from online sources.

Start-ups:

Start-ups	**Previous limit**	**Revised limit**
Date of incorporation for income tax benefits	31.03.2023	31.03.2024
Time limit for set-off and carry forward of losses	7 years from incorporation	10 years from incorporation

The only requirement is that the shares must still be held by the shareholders with at least 51% of the voting power during the year in which the loss is to be carried forward and set off Co-operative Societies:

Some of the suggestions for cooperative Societies that have been announced are:

- New efforts in manufacturing: The government has extended the advantage of a 15% tax rate reduction to new cooperatives that start production before March 31st, 2024.
- Sugar cooperatives: By submitting an application to the Assessing Officer, sugar cooperatives may now recover any expenses that were previously forbidden to them before 2016–17.
- For cooperative societies, the TDS ceiling on cash withdrawals has been raised to Rs. 3 crores under Section 194N.
- Cash deposit cap: Primary Co-operative Agriculture and Rural Development Banks (PCARDBs) and Primary Agricultural Co-operative Societies (PACS) have increased the cap on cash deposits and loans to a maximum of 200,000 per member.

Other Direct Tax Updates:

- The exemption threshold for leave encashment for non-government workers has been raised from Rs 3 lakh to Rs 25 lakh. Therefore, under Section 10, leave encashment up to Rs. 25 lakhs for a maximum of 10 months is tax-free at the time of retirement (10AA).
- TDS on EPF Withdrawal: The TDS rate has been lowered from 30% to 20% for taxable EPF withdrawals.
- Payment-based Deduction: Any payment made to an MSME is only eligible for reimbursement when it is actually made. With this change, Section 43B is now applicable to payments to MSME.

No Penalty: There is no penalty under Section 269SS or 269ST when a loan is accepted oreturned by a primary agricultural credit society, a primary co-operative agricultural and rural development bank to its members, or the other way around.

Limit on Capital Gains Exemption: Sections 54 to 54F's exemption from capital gains tax is capped at Rs. 10 crores. There was no threshold in the past.

2. Indirect Tax

a. Customs Duty:

The indirect tax measures included in Budget 2023 stimulate local manufacturing, raise domestic value addition, support exports, and advance green energy and transportation.

The following list of commodities had their customs duties updated:

Items of which customs duty was revised	Impact/Benefit
Imported capital goods for lithium-ion battery manufacturing	For greener mobility
Imported mobile camera lens	Deepening value addition
Denatured ethyl alcohol	Benefits the chemical industry
Primary inputs for making shrimp feed	Increase in marine exports
Seeds for manufacturing lab-grown diamonds	Promotes exports
Extending the concessional Basic Customs Duty (BCD) on copper scrap	Increasing raw material availability for MSMEs
Compounding rubber to bring it at par with natural rubber	To curb duty circumvention

- The National Calamity Contingent Duty (NCCD) was raised on a certain brand of cigarettes.
- To match the customs charge on gold and platinum, the importation of silver dore, bars, and other items has increased. Additionally, there are higher taxes on jewelry made of precious metals including gold, silver, and platinum.
- Extensions are given to the BCD exemptions for ferrous scrap, nickel cathode, and raw materials used to make CRGO steel.
- The basic customs charge on seeds used to produce lab-grown diamonds has been decreased by FM (LGDs).
- The fundamental customs tax on electric kitchen chimneys has gone raised.
- To promote domestic television production, FM decreased the basic customs tariff on components of open TV panel cells.
- The import of capital goods and equipment required to produce lithium-ion cells for electric car batteries will continue to be free from customs duties.
- Additionally, the excise charge on compressed biogas that has already been mixed and paid for with GST is exempt.
- On several imported products, including toys, bicycles, cars, and naphtha, minor adjustments are made to the basic customs taxes, cesses, and surcharges.

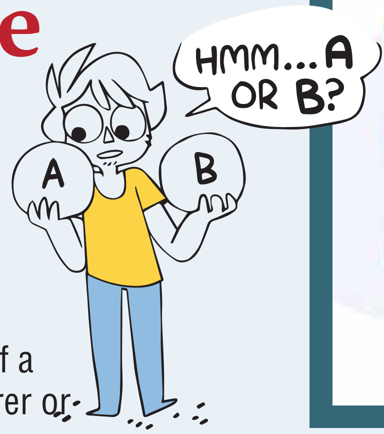
b. GST:

- A taxpayer may choose to participate in the composition system under the modified Section 10 even if they are selling items through e-commerce companies where TCS is collected under Section 52.

- It is now required by Section 16 that recipients taxpayers pay interest calculated in accordance with Section 50 on amounts they fail to pay to their suppliers, including GST, within 180 days of the invoice's issuance date.
- Expenditure on CSR effort for corporates is now listed as another item under "ineligible ITC" non Section 17(5).
- According to the amended Section 17(3), high seas sales and comparable transactions are not regarded as exempt supplies of goods or services, hence ITC proportionate to such sales cannot be claimed.
- In accordance with the modified Sections 37, 39, 44, and 52, taxpayers are not permitted to submit Forms GSTR-1 (return for outward supplies), GSTR-3B (summary returns), GSTR-9 (annual returns), or GSTR-8 (e-commerce operator) for a tax period if three years have passed after the due date.
- If an e-commerce operator undertakes to do any the following, they will be subject to a penalty of Rs. 10,000 or, if that amount is larger, the amount of tax involved.
- Exempt a person from GST registration if they let an unregistered person to supply goods, services, or both via them.
- If a registered individual is ineligible, permit them to prevent anybody else from making an interstate supply of goods or services via them.
- Don't accurately disclose any sales of goods made via them by a person exempt from obtaining registration in the GSTR-8.
- The following offences have been made less serious:
  - interfering with or impeding with the performance of an officer's responsibilities under the CGST Act;
  - Tampering with or destroying tangible evidence or records;
  - When someone provides inaccurate information or fails to provide information that is needed to be provided by the CGST Act or Rules.
- The thresholds for compounding offences have modified to a maximum of 100% of the tax involved plus 25% of the tax involved.
- Businesses may now consent to the digital sharing of GST data under a new section 158A of the CGST Act. It specifies how and under what terms information provided by a registered person on the GST portal may be shared with other systems that may be made known, as stated in: returns filed under GSTR-1/3B/9; applications for registration; statements of outward supplies; generation of an e-invoice or e-way bill; or any other information that may be specified.

INTERACTIVE SESSIONS

Multiple Choice Quiz?



i. The responsibility of a product manufacturer or product seller, or product service provider, to compensate for any harm caused to a consumer by a defective product manufactured or sold or by a deficiency in services in relation to the product.

a. Strict Liability
b. Absolute Liability
c. Manufacturer Liability
d. Product Liability
e. Product Responsibility

ii. The 20th-century product liability law is best characterized by the phrase:

a. Res ipsa loquitur
b. Caveat emptor
c. Caveat venditor
d. Laissez-faire
e. Right to cure

iii. The Consumer Protection Act, of 2019 marked the end of [.] doctrine

a. Seller beware
b. Buyer beware
c. Doctrine of the election of remedies
d. Doctrine of Strict Liability
e. None of the Above

iv. The Act of 2019 envisages individual criteria for attracting product liability actions against [.], [.], and [.]

a. Product Manufacturer
b. Service Provider
c. Product Seller
d. All of the Above
e. None of the Above

v. Which Ministry is responsible for laying down Consumer Protection Act, 2019 in India?

a. Ministry of Personnel, Public Grievances, and Pensions
b. Ministry of Law and Justice
c. Ministry of Consumer Affairs, Food, and Public Distribution
d. Ministry of Food Processing Industries
e. None of the Above

vi. Product-liability cases have consequently led to development in general principles of [.] and [.]

a. Consumer Law
b. Contract Law
c. Tort Law
d. Both (a) and (b)
e. Both (b) and (c)

vii. Product liability is based on the following principles in tort law.

a. Negligence
b. Strict Liability
c. Warranty
d. Both (a) and (b)
e. Both (b) and (c)

viii. Common examples of product liability claims are:

a. Breach of warranty
b. Design Defects
c. Failure to warn
d. Manufacturing Defects
e. All of the above

[Answers – (i) Product Liability (d),(ii) Caveat venditor (c), (iii) Buyer Beware (b), (iv) Product Manufacturer, Product Seller, and Service Provider (d), (v) Ministry of Consumer Affairs, Food and Public Distribution (c), (vi) Contract law and tort law (e), (vii) Negligence and Strict Liability (d), (viii) Design defects, Manufacturing defects, failure to warn and breach of warranty (e)]

ABOUT MCCI

MCCI is a 122 years old non-government, not-for-profit, industry-led and industry-managed organization, with 700 direct members and 15,000 indirect members covering a wide cross-section of small, medium & large industries, trade and services besides, 10 Associations of Industry & Trade are also affiliated to MCCI.

MCCI addresses various aspects of the industry, trade and service sectors, their issues & Challenges and through several learning and best practices forums, guide them to the future. MCCI also helps members to explore international business opportunities through its international connect initiatives.

MCCI has been working on the development of an indigenous vibrant industrial base in the country, especially in Eastern India. The indomitable spirit and quest to build an institution to safeguard the interests of the indigenous business community led to the birth of Vaishya Sabha and with the changing times, now it stands as MCCI. MCCI has evolved to reinvent itself to address the challenges in this era of new normal.

MCCI works as a bridge between businesses and the policy makers to create a conducive economic environment for the industry to prosper and flourish while benefitting all the stakeholders in the economy. The Executive Committee, which has 30 Councils reporting to it, is the principal facilitating structure of the Chamber.

We are one of the leading Chambers of Eastern India relentlessly working for the betterment of MSMEs through several initiatives. MSME Helpdesk, IP facilitation, connecting with Banking and Financial institutions, technology for MSMEs, besides taking up members' issues at the appropriate level. Several Business meets are organized for the benefit of the members.

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