



05 February 2020

Dear Readers,

We bring to your reading and attention following topics:

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**A) LEGAL AND REGULATORY UPDATES:**

**I. Enhancement in Applicability for Secretarial Audit**

Every company having outstanding loans or borrowings of Rs. 100 crores or more from banks or PFI shall conduct Secretarial Audit from FY 2020-21 onwards.

**II. Relaxation in Appointment of Whole-Time Company Secretary**

The requirement of appointment of Whole-Time Company Secretary has been relaxed for Companies having paid up capital upto Rs. 10 crores (earlier limit was Rs. 5crores)

**III. Lending against security of single product – Gold jewellery<sup>1</sup>**

The Reserve Bank of India vide its notification dated 21.01.2020 bearing reference no. RBI/2019-20/148, has reviewed and decided that NBFCs can pool gold jewellery from different branches in a district and auction it at any location within the district, subject to meeting certain conditions

**IV. Amendment to Master Direction (MD) on KYC<sup>2</sup>**

The Reserve Bank of India vide its notification dated 09.01.2020

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<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/148LENDINGE170B7775B524A70A63657218883D6FA.PDF>

2

<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/CIRCULAR1385B2E30C2E186423CB03EDF39D6133254.PDF>

bearing reference no. RBI/2019-20/138 has notified amendment to the Prevention of Money-laundering (Maintenance of Records) Rules, 2005. Further, Reserve Bank of India with a view to leveraging the digital channels for Customer Identification Process (CIP) by Regulated Entities (REs) has decided to permit Video based Customer Identification Process (V-CIP) as a consent based alternate method of establishing the customer's identity, for customer on boarding.

#### V. **The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019**

In exercise of the powers conferred by clause (1) of Article 123 of constitution the President has promulgated the aforesaid Ordinance and it shall come into force at once. The notification can be accessed using the below mentioned link:

<http://egazette.nic.in/WriteReadData/2019/214957.pdf>

#### B) **SECTION 138 NI ACT: NO CASE MADE OUT IF CHEQUE AMOUNT IS MORE THAN THE LIABILITY**

Delhi High Court has refused to grant leave to appeal in a cheque bounce case where the accused was acquitted since the cheque amount was more than the liability.

A bench of Justice Bakhru has passed the order in the case titled as **STARKEY LABORATORIES INDIA PVT LTD vs SANJAY GUJRAL** on 24.09.2019.

The petitioner's complaint related to the dishonour of a cheque (No.00054 dated 09.10.2014 drawn on Bank of India, Dilshad Garden branch for a sum of Rs.2,00,000/-). It is stated that the said cheque was issued by the respondent at the beginning of their business relationship in the year 2011 as a security.

The petitioner claims that it is in the business supplying hearing aids and had supplied the said products to the respondent. The petitioner stated that as on 11.10.2012, a sum of RS. 1,49,569/- was outstanding against the respondent.

It was the respondent's case that their accounts had been settled as he had returned certain products, which had been supplied to him and the credit for the same had not been accounted for.

The undisputed facts are that the petitioner was in possession of a blank cheque furnished by the respondent. As per the books of the petitioner, a sum of Rs. 1,49,569/- was outstanding as on 11.10.2012. However, the petitioner waited for over two years to fill an amount of RS. 2,00,000/- in the said blank cheque and deposited the same. According to the petitioner, the amount of RS. 1,49,569/- had increased to RS.

2,16,247/- as on the date of depositing the cheque, on account of interest calculated at the rate of 24% per annum.

The trial court had noted that there was no contract or arrangement whereby the respondent had agreed to pay any interest.

High Court observed and held as under:

"In the aforesaid view, the petitioner had been unable to establish that the cheque of RS. 2,00,000/- had been issued by the respondent against any such liability.

Even if it is accepted that the sum of RS. 1,49,569/- was due from the respondent as on 11.10.2012, as deposed on behalf of the petitioner, the liability of RS. 2,00,000/- was not established.

The view taken by the trial court is a plausible one and thus no interference is called for by this Court. Accordingly, the petition is dismissed"

### **C) ESG: Relationship between Corporate Social Responsibility and Corporate Governance<sup>3</sup>**

Corporate Governance and Corporate Social Responsibility (CSR) are conceptualised by the Western countries, where their practices have developed tremendously in the last decade. During these periods the idea has been exported to other parts of the globe largely through the activities of multinational National companies. It may be noted that the Corporate Governance and CSR are two related and interwoven business concepts that are deeply embedded in business practices.

#### **Definition of CSR**

The idea of CSR largely started as a philanthropic gesture by a few wealthy businessmen. However, during the last decade the CSR is becoming buzz word in the corporate sector. The changing context within which companies operate, shaped by environmental and globalization forces, affects the way that the role of business is perceived. Now days, a growing number of companies worldwide have acknowledged the importance of CSR in doing business. There is no universally accepted definition of the word "CSR", the meaning and definition of CSR depends upon on mainly two factors; Firstly, context in which it is used and secondly, stakeholder. The difficulties in defining precisely CSR are in part reflective of the way in which this topic has developed and the context of its use. For some, it has grown out of corporate philanthropy with a clear emphasis on social improvements or strategic investment keeping in view long term goals. For others, CSR has a much broader definition and is closely related to the sustainable development and environment issues.

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<sup>3</sup> <http://www.iosrjournals.org/iosr-jbm/papers/vol2-issue3/D0232426.pdf?id=5519>

## **Corporate Governance**

The concept of corporate governance was almost non-existent in India. In late 90's the concept of corporate governance was introduced in India by the Securities and Exchange Board of India (SEBI) through Listing Agreement, which is applicable to the listing companies only. According to OECD the Corporate Governance structure specifies the distribution of rights and responsibilities among different participants in the corporation, such as, the Board, managers, shareholders and other stakeholders spells out the rules and procedures for making decisions on corporate affairs. According to Sir Adrian Cadbury, "Corporate Governance is the system by which companies are directed and controlled....." Corporate governance may be defined as the broad range of policies and ethical practices which are adopted by an organisation in its dealing with the stakeholders.

## **Relationship Between Corporate Governance and CSR**

The conceptualization of CSR was, initially, purely in terms of philanthropy or charity. However, the post-liberalization phase has seen a fundamental shift from this philanthropy-based model of CSR to a stakeholder- participation based model. Furthermore, CSR is gradually getting fused into companies' Corporate Governance practices. Both Corporate Governance and CSR focus on the ethical practices in the business and the responsiveness of an organisation to its stakeholders and the environment in which it operates. Corporate Governance and CSR results into better image of an organisation and directly affects the performance of an organisation. It is pertinent to mention here that transparency, disclosure, sustainability and ethical behaviour is central theme in both CSR and Corporate Governance. Further, it is worthwhile to mention that CSR is based on the concept of self-governance which is related to external legal and regulatory mechanism, whereas Corporate Governance is a widest control mechanism within which a company takes its management decisions. Furthermore, the objectives and benefits of CSR and Corporate Governance are similar in nature, some of them are stated herein below:

- Rebuilding of public trust and confidence by increased transparency in its financial as well as non-financial reporting and thereby increasing the shareholder value.
- Establishing strong brand reputation of the company.
- Making substantial improvement in its relationship with various stakeholders.
- Contributing to the development of the region and the society around its area of operation
- Addressing the concerns of its various stakeholders in a balanced way so as to maintaining a strong market position.

## **Conclusion**

For many years, the approach of companies on the role of business in society could be summarized with the following words of Milton Friedman: "there is one and only one social responsibility of business to increase its profits" and "Business of business is business". However, it may be worthwhile to mention that the world has moved far

ahead from the aforesaid words of Milton Friedman, now a day's Corporate Governance and CSR are integral part of any company. It may be noted that, at present, the provisions of Corporate Governance are mandatory and recommendatory under various provisions discussed hereinabove. However, there is no concrete system for CSR, it is purely optional. Furthermore, since Corporate Governance and CSR is interrelated and complementary to each other, by incorporating CSR provisions within Corporate Governance framework would be beneficial for India.