CASE LAWS FROM MODULE

CMADD

FOR DECEMBER 2024

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Compliance Framework

1.Tata Motors has implemented a comprehensive GRC program that covers all aspects of its operations, including legal compliance, risk management, and ethical practices. The company has established a risk management framework that enables it to identify and mitigate potential risks and ensure compliance with all applicable laws and regulations. Mahindra & Mahindra has implemented a GRC framework that encompasses all aspects of its operations, including risk management, compliance, and ethical practices. The company has established a risk management committee that oversees the identification and mitigation of potential risks and ensures compliance with all applicable laws and regulations.

2.In **Re Siddarth Gupta (Appellant) v. The Delhi Golf Club Limited & Anr (Respondent) [DEL] I.A. No. 19355/2015 in C.S (OS) No. 2805/2015**, in this matter the Appellant had acquired membership in the Delhi Golf Club Ltd after paying the requisite fees and was enjoying the rights and privileges guaranteed to the members of the Club.Meanwhile, the Appellant got to know that a resolution had been passed in the AGM of the Club wherein the Appellant's membership was cancelled. Consequently, the Appellant filed a Petition against the said resolution in the Delhi High Court. The honourable court observed that the membership of a person can be cancelled only after following the related provisions of the Memorandum of Association and Articles of Association of the Club and also the Principles of Natural justice. In this scenario neither any notice was given to the appellant nor any opportunity of being heard was provided to Appellant.

Further, the provisions related to expulsion of members as mentioned in the Memorandum of Association and Articles of Association were not followed. Therefore, the resolution could not be sustained. The Court directed the club to reverse the Resolutions and refrained from cancelling the membership of the appellant.

3.Non-Compliance of mandatory standards prescribed as per the Domestic Pressure Cooker (Quality Control) Order, 2020

CCPA fines Cloudtail with Rs 1 Lakh for not complying with BIS standards. The Central Consumer Protection Authority (CCPA) has imposed a fine of Rs 1 Lakh on Cloudtail India for violating the Quality Control Orders and consumer rights.

The company has also been asked for the price reimbursement of 1,033 pressure cookers to the consumers and is directed to submit the compliance report within45 days.

Cloudtail, a retail company selling pressure cookers on an e-commerce platform,was issued an order for unfair trade practice by selling domestic pressure cookers in violation of mandatory standards prescribed as per the Domestic Pressure Cooker (Quality Control) Order, 2020. The company was also directed to pay a penalty of Rs 100,000 for selling domestic pressure cookers to consumers in violation of mandatory standards prescribed under the QCO and violating the rights of consumers.

4.ABC Limited, A BSE limited company has made following cyclical reporting arrangements for compliance activities which includes:

Audit & Risk Management Committee: Quarterly reports on theperformance of the compliance programme will be submitted to the Audit and Risk Management Committee. These reports will include a high-level summary of activities by all functions undertaking significant compliance related activities.

Separate reports will also be submitted to the Audit and Risk Committee for major noncompliance incidents or emerging compliance issues.

Annual Certifications: At the end of each financial year Responsible Officers will be required to provide an assurance that to the best of their knowledge, the ABC Limited has complied with the obligations relevant to their area of responsibility.

Assurance Maps: To facilitate quarterly and annual reporting requirements anassurance mapping approach that is consistent with the model.

Regulatory Reporting: The regulatory reporting arrangements for compliance activities shall be accounted. The reporting of significant compliance issues which are required by law must be undertaken in accordance with the procedures.

5.Director carrying competing business breaches fiduciary duty, imposes restriction, interprets Section 166 of the Companies Act, 2013 In the matter of **Rajeev Saumitra Vs Neetu Singh (I.A. NO. 17545 OF 2015. CS (OS) NO. 2528 OF 2015 JANUARY 27, 2016**, the honourable Court held that director has breached fiduciary duty u/s 166 of Companies Act, 2013 by initiating competing business as the director was involved in the situation in which there was a direct interest that conflicted with company's interest,in order to gain advantage by director and its relatives. In case a Director violates the duties prescribed in Section 166, the cause of action accrues in favour of Company.

6.In this matter of **Economy Hotels India Services (Appellant) Private Limited Vs. Registrarof Companies & Anr.(Respondent) (NCLAT)** Company Appeal (AT) No. 97 of 2020, the Appellant Company had filed a petition under Section 66 of the Companies Act prayingfor confirming the reduction of share capital against the NCLT order for rejection of application for reduction of share capital because in the extract of the minutes submitted to NCLT, the case is, it was written that the 'unanimous ordinary resolution' required for reduction has been obtained. The case is it was a mere typographical errorin the minutes characterising the 'special resolution' as 'unanimous ordinary resolution'and the Appellant had filed the special resolution with ROC and fulfilled all the statutory requirements prescribed in the Companies Act, 2013.

The honourable NCLAT observed that 'Reduction of Capital' under Section 66 of the Companies Act, 2013 is a 'Domestic Affair' of a particular Company in which, ordinarily, a Tribunal will not interfere because of the reason that it is a 'majority decision' which prevails. As the Appellant has admitted its typographical error in the extract of the Minutes of the Meeting characterizing the 'special resolution' as 'unanimous ordinary resolution' and also taking into consideration of the fact that the Appellant had filed the special resolution with ROC, which satisfies the requirement of Section 66 of the Companies Act, 2013. NCLAT allowed the Appeal, thereby confirming the reduction of share capital of the Appellant Company.

7.The Registrar Of Companies, West Bengal (Appellant) V. Karan Kishore Samtani (Respondent)(NCLAT) Company Appeal (AT) No. 13 of 2019, in this matter the Respondent was the Director, for more than 20 Companies. Till 31.03.2015. On 27.01.2016 the Registrar of Companies, West Bengal sent show cause notice on the ground that he was the Director of more than 20.Companies at once. The Respondent admitted the guilty and sent representation to the Registrar with a request to compound the offence under Section.441(1) of the Companies Act, 2013. After hearing the parties the NCLT Kolkata Bench (Tribunal) allowed the compounding application subject to payment of compounding. Fees of Rs. 50,000/-.

Being aggrieved with this order ROC has filed this Appeal saying that theminimum fine prescribed for the offence is more than 50,000,. Hence the compounding fees of 50,000 is not appropriate. The issue for consideration is, whether Tribunal can impose the compounding fees, less than minimum fine prescribed for the offence under the Act.

Provision Involved: Section 165(6) of Companies Act, 2013 states - If a person accepts an appointment as a director in contravention of sub-section (1), he shallbe punishable with fine

which shall not be less than five thousand rupees but which may extend to twenty- five thousand rupees for every day after the first during which the contravention continues.

The NCLAT held that the NCLT, Kolkata Bench has failed to notice the minimum fine prescribed under Section 165 of the Companies Act, 2013 which was applicable at relevant time. Accordingly, NCLAT imposed minimum fine at the rate of 5000 rupees for every day for the period 01.04.2015 to 21.02.2016 i.e. 272 days, which came to Rs. 13,60,000. Further, the court held that the compounding fees has to be more than or equal to the minimum fine prescribed under the Act.

7.Project Eagle: Infosys Regulatory Compliance Program

Infosys compliance program, known as Project Eagle, is intended to track, detect, prevent and remediate any violations of applicable laws and regulations and to encourage a culture of compliance to protect our organizations value and guidesour interactions with governments, regulators, shareholders, employees. Infosys regularly assesses and enhances the compliance mechanisms to meet its evolving compliance needs and obligations, in collaboration with Functional Heads and external consultants. Project Eagle covers the applicable regulations emanating from, for example, Global Immigration, Health, Safety, HR & Employment Law, Tax, Anti Bribery, Export Control, Information Security, Intellectual Property etc.

Project Eagle is supported by the implementation of software tool-based systems ("Compliance Manager Tool") to effectively track and monitor such applicable compliances under various regulations and enable compliance with the same. Infosys use the Compliance Manager Tool to implement an enterprise-wide regulatory compliance management to oversee and track regulatory compliancefor applicable regulations globally. The company also have a contractual arrangement with external consultant to add more countries in the tool as and when required.

Any changes in applicable regulations are also being updated on the tool on a regular basis, in collaboration with external consultant. An inter-functional teamof designated users and checkers oversee implementation and its functioning.

Further, respective Functional Heads also supervise and certify continued adherence of applicable regulations as well as any risk of non-compliance with mitigation plan to theBoard on a quarterly basis. Infosys culture of compliance and the compliance tracking tools are reviewed by Audit Committee of the Board and Management at regular intervals. It further undergoes independent assessment internally and with the help ofexternal auditors.

Documentation & Maintenance of Records

1.Consequences of non-maintenance of record (updated Register of Members)

In the matter of **M/s. SDU Holdings Private Limited,** the Registrar of Companies, Bangalore, has passed an adjudication order by imposing of penalty, for violation of provisions of section 88 of the Companies Act, 2013. As per the provisions of the Companies Act, 2013, every company limited by shares shall from the date of its registration, maintain a register of its members in form no. MGT-1

During the course of enquiry pursuant to section 206 of the Companies Act 2013, the inspection officer persuaded the statutory registers maintained by the company and noticed that the register Form No. MGT-1 maintained by the company is incomplete. Taking on account of default, the adjudication officer gave reasonable opportunity to being heard to the company and every officer in default by way of giving personal hearing notice.

Consequently, the Adjudicating Officer, after having considered the facts and circumstances of the case and also the submissions made by the company and its director during the personal hearing, decided to impose the penalty on the company and its directors for non-compliance of section 88 of the Companies Act, 2013.

The Company Secretary is also responsible for storing, maintaining, retrieving, certifying, and explaining corporate documents.

A Company Secretary is often responsible for documents relating to subsidiaries, joint ventures, consortiums, and other entities also.

2.In the matter of **Welspun Project Ltd. V. National Company Law Tribunal, Ahmedabad Bench** (T.P. NO. 149/621A/ NCLT/AHM/2016), it was observed that the Register of directors' shareholding of the petitioner company did not disclose the complete particulars as required under section 307 of the Companies Act, 1956 (now section 170 of the Companies Act, 2013). ROC's report observed that this violation was committed for about 8 years. Petitioners admitted such violation and filed petition under section 621A (now section 441) for compounding violation. The offence committed was compounded on payment of fine.

3. Compliance Management -Maruti Suzuki Limited

To ensure compliance with increasing regulatory requirements and enforcement, the Company has established systems and controls to continually ensure zero non- compliance with the law. A compliance certificate is submitted to the Board on a quarterlybasis. During the reporting period, over 3,500 applicable compliances were monitored through an electronic system and 78 compliance health checks were done covering allfacilities. The tracking mechanism was enhanced to manage compliances more efficiently and productively. There was no significant non-compliance with applicable laws and regulations during the year. The Company observes an annual 'Compliance Month' reinforcing its commitment to doing business

4. In the matter of **M/s Indiabulls Real Estate Limited**, the Registrar of Companies, NCT of Delhi & Haryana, has passed an Adjudication order for non-compliance of the provisions ofsub-section (10) of section 118 (mandatory observance of Secretarial Standards with respect of general and board meetings) of the Companies Act 2013 read with Secretarial Standards – 1 & 2.

As per section 206(5) of the Companies Act 2013, the Central Government carried out the inspection of the books of accounts of the company and after going through the records / documents of the company, the inspector, upon completion of the inspection observed that the company has not complied with the provisions of section 118 (10) read with Secretarial Standards. The inspector while submitting the report pointed out that the company has not serially numbered their "Attendance Register" of board meetings and other meetings and also the "Attendance Register" maintained in loose- leaf form, not bound periodically, which is not in compliance with section 118 of the Companies Act 2013 read with Secretarial Standards issued by the Institute of CompanySecretaries of India.

The Registrar of Companies, based on the report submitted by the inspector, issued a show cause notice to the company. The company in a reply to show cause notice statedthatthe company and its directors / officers accept that there has been an inadvertentmistakesand these have been rectified subsequent to the issue of the show cause notice. The company stated that there was no deliberate intention and no mens-rea with read to the offences and therefore the company, its directors / officers deserve tobe excused.

The Registrar of Companies / Adjudicating Officer came to the conclusion after going through the application and also based on the oral and written submission made by the company at the time of the personal hearing and imposed penalty on the companyand its officers.

5. A Case Regarding Admissibility of Electronic Evidence

In the matter of **Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantayal and Ors. civil appl no. 20825- 20826 of 2017,** Civil Appeals were referred to a Bench of Judges of Supreme Court by a Division Bench, dealing with the interpretation of Section 65B of the Indian Evidence Act, 1872 by two judgments. It was found by the court that a Division Bench judgment in Shafhi Mohammad v. State of Himachal Pradesh (2018) 2 SCC 801 may need reconsideration by a Supreme Court Bench of a larger strength. In the case of Shafhi Mohammad (supra). it was observed by Supreme Court that it can be safely held that electronic evidence is admissible and provisions under Sections 65-A and 65-B of the Evidence Act are by way of a clarification and are procedural provisions. If the electronic evidence is authentic and relevant the same can certainly be admittedsubject to the Court being satisfied about its authenticity and procedure for its admissibility may depend on fact situation such as whether the person producing such evidence is in a position to furnish certificate under Section 65-B(4).

The Supreme Court observed that the major premise of Shafhi Mohammad (supra) that the certificate under section 65-B(4) cannot be secured by persons who are not in possession of an electronic device is incorrect. An application can always be made to a Judge for production of such a certificate from the requisite person under Section 65B(4) in cases in which such person refuses to give it.

6.In the matter **of M/s. Michelin India Pvt Ltd, the Registrar of Companies**, Tamil Nadu on 18th October, 2022, has passed an adjudication order by imposing of penalty for violation of provisions of section 134(3)(f) of the Companies Act, 2013. Pursuant to Section 134(3)(f) of the Companies Act, 20l3, there shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, Which shall include explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in auditors report or by company secretary in his secretarial audit report.
The Regional Director, Southern Region Chennai has observed that while examining, that the statutory Auditor's in their audit report have reported deficiencies in the internal financial control and they were unable to obtain sufficient and appropriate audit evidence.It is clearly evident from the said statement that the company did not have proper internalfinancial control and also did not maintain appropriate records. Further, auditors report also mentioned non-maintenance of back up of books of accounts maintained in electronic mode in servers physically located in India. However, the Board of Director in their Boards report have not offered any explanation for the observations of auditors.

The Regional Director, Ministry of Corporate Affairs, had issued directions to take action

against the company, every director and key managerial personnel of the company who is in default and to penalize the defaulter(s) bid adjudication order.

Signing and Certification

1.In **Re Securities and Exchange Board of India Vs. Shankar Civil Appeal No. 527 OF 2023,** Supreme Court of India dated 08.02.2023, in this matter the SAT came to conclusion that role of compliance officer, was limited to redressing grievances of investors and he was nowhere responsible for false or misleading open offer made by company. The Apex courtheld that, crucial point which had been missed by SAT was that compliance officer was also required to ensure compliance with Buyback Regulations as expressly stipulated by regulation 19(3) of SEBI (Buyback of Securities) Regulations, 1998, decision of SAT was tobe set aside and proceeding were to be remitted back.

2.In Re Deep Himanshu Desai (petitioners) Vs. Union of Indian (Respondents) Civil Writ Petition No.9564 of 2020 High Court of Rajasthan dated 02.09.2020, in this matter it washeld that the petitioners who were treated as disqualified directors under section 164(2)(a) sought direction to use their Director Identification Number (DIN) and Digital Signature Certificate for purpose of filing annual return. As per the decision of court the respondents were directed to reactivate Director Identification Number (DIN) of petitioner(s) and Digital Signature Certificate to enable petitioner(s) to file necessary annual return and also to discharge their statutory obligations.

3.In Re AVS Enterprises (P.) Ltd. Vs. Registrar of Companies, Delhi, Company Appeal (AT) no.47 of 2021, NCLAT New Delhi dated 05.04.2022, in this matter the appellant company hadnot filed annual returns with Registrar of Companies from year 2006-07 onwards and, itsname was 'struck-off' from Register of Companies. Further, in view of fact that company was carrying on business operation and right to seek restoration of name of company wasnot extinguished, name of company was to be restored in register of companies subject to filing of all pending statutory documents along with late fee.

- Dormant status: If the Company has not filed its Annual Return for two financial years consecutively, the Registrar shall issue notice to the Company and enter its name in the Register of Dormant Companies. [Section 455(4)]
- Compounding of Offences: Provisions and procedure for compounding of offences, which are punishable under Companies Act, 2013 are stipulated under Section 441.

4.In **Re HIFFCO Farming Ltd. Vs. Registrar of Companies. NCLAT New Delhi**, Company Appeal (AT) no. 51 of 2022, dated 21.04.2022, in this matter the appellant company had not

filed financial statement with Registrar of Companies from year 2006-07 onwards andits name was 'struck-off' from Register of Companies, in view of fact that company was carrying on business operation and right to seek restoration of name of company was notextinguished, name of company was to be restored in register of companies subject to filing of all pending statutory documents along with late fees.

Legal Framework Governing Company Secretaries

1.Mayank Agarwal (Applicant) VS. M/s. Technology Frontiers (India) Private Limited (Respondent Company) National Company Law Tribunal (Chennai Bench) IA/2/2021 in CP/75/CHE/2021

The Company Secretary can represent before various regulators and other authorities in connection with discharge of various duties under the Act. The NCLT being a quasi-judicial authority the Company Secretary can very well do the same.

In this case, the Company Secretary of the respondent company had sent the notice tothe applicant under Section 90(5), (who is nominee director of the Respondent Company) on May 3rd, 2021 along with the form to disclose their Ultimate Beneficial Ownership of the shares held.

However, the applicant alleged that the company alone is empowered to apply to NCLT under Section-90(7) of the Companies Act, 2013 and Company Secretary has not taken approval from Board of directors to file the present petition.

The Company Secretary of Respondent Company in his written submission stated thathe has the locus standi as per the board resolution passed for his appointment which clearly states that "he can perform any duties as required under Companies Act, 2013" and have the authority to enter into pleadings on behalf of company even in absence of formal board authorization. Further, he referred to the provisions of section 205 of the Companies Act 2013, under which he is authorized to represent and that it is his duty to do so.

Order: The usage of the words "Company shall give notice" under Section 90(5) makesit amply clear that the Key Managerial Personnel have to do this activity of seeking information; in order to find out the Ultimate Beneficial Owners. The Company Secretaryhas acted diligently and promptly to ensure compliance of the mandatory provisions. Hence, the application stand dismissed.

Values, Ethics and Professional Conduct

1.United Drags a Bloodied Passenger Off a Flight

United Airlines felt the fallout worldwide when two security officers forcibly removed a bloodied passenger off an overbooked United flight Consumers worldwide reactedwith horror and quickly called for a boycott. Making matters worse: United CEO Oscar Munoz apologized for the incident in rather sanitized corporate speak, saying"this is an upsetting event to all of us here at United" — underestimating just how viscerally disturbing the video had been, and how dissatisfied fliers were with the airline industry. Adding salt to the open wound, media reports revealed that Munoz had called Dao "disruptive and belligerent" in a letter to employees. While the incident wasn't expected to hurt profits, the debacle struck a chord among consumers who have dealt with years of flagging service standards aboard flights. Even after Dao and United settled out of court, the frustrations unleashed upon airlines would not stop, with complaints against airlines up 13% in the six months following the incident, accordingto data from the U.S. Department of Transportation.

2. 21st Century Fox and Bill O'Reilly

Sexual harassment allegations plagued many companies in 2017, including the entertainment giant 21st Century Fox. Fox's woes started in 2016, with former anchor Gretchen Carlson filing a lawsuit against Fox News Channel's news chief Roger Ailes, alleging sexual harassment. But it didn't stop there. it was reported that star commentator Bill O'Reilly had paid five millions to keep allegations of sexual harassment in the dark. Upon hearing the news, advertisers hastily suspended their segments during the O'ReillyFactor. By April, O'Reilly was out. Still, the news was upsetting to shareholders who considered the multiple allegations a sign of a company culture that allowed for sexual harassment. Adding fuel to the fire: Fox reportedly knew of the claims against O'Reilly when it decided to give him a new contract in January. Thus in November, Fox agreed topay $90 million to settle shareholder claims related to the O'Reilly and Ailes scandal, andcreate a council focused on creating a proper workplace environment.

3.Alphabet and Face book

The year following the presidential election became one for Congress and internet titans to rethink their role in the democratic process. Amid speculation that fake news spread on social media may have influenced the 2016 elections, giants such as Facebook and Google appeared to dismiss the possibility. But that changed in 2017, with Facebook and Google which derive a major chunk of their revenue from ad placements both saying that they had found accounts tied to the Russian government. Facebook reported some 3,000 Kremlin- linked ads aimed at dividing the country that had been bought on its platform. Google, meanwhile, found tensof thousands of ads bought by Russia-linked entities on YouTube and Gmail. Twitter also revealed that a news outlet paid for by the Russian government, Russia Today, had spent $274,000 in ads on the platform in 2016.There's no indication that the questions will stop any time soon. Twitter, Facebook, and Google are still investigating how much Russian activity there had been on their platforms. Adding tobig tech's big problems: Congress appears to be taking a harder stance against the sector, with some on Capitol Hill questioning theway they are getting users to keep coming back.

4.Samsung's Bribery Charges

In 2016, Samsung dealt with exploding Note 7 batteries. In 2017, it was imploding corporate ranks. Originally planning to put their Lee Jae-yong at the head of the empire, the family-run Samsung conglomerate is now facing questions of succession after Lee was caught in a sprawling political scandal that took down former South Korean PresidentPark Guen-hye. Lee Jae-yong is now facing five years (and potentially 12) in jail for offering llegedly offering bribesto Park, embezzlement, and hiding assets overseas. Samsung Electronics co-CEO Kwon Oh- hyun meanwhile also resigned in October, citing Samsung's leadership woes. "As we are confronted with unprecedented crisis inside out, I believe that time has now come for the company [to] start anew, with a new spirit and young leadership to better respond to challenges arising from the rapidly changing IT industry," he said in a statement. While Samsung's long-term health is still on shaky ground, the company's near-term outlook belies those worries. The company posted record-breaking profits in the third quarter of $12.8 billion,almost triple the number it posted a year earlier.

5.Apple's Slowed Down iPhones

The tech giant's year ended with a bang, after reports that Apple had purposely slowed down older iPhones to compensate for decaying batteries. It appeared to feed into a long- time conspiracy theory among some Apple users: that the company had been purposely slowing down old models when a new version came out in a bid to force consumers to upgrade. Now, the company is facing lawsuits for allegedly slowing down the devices without first warning

consumers. In response, Apple has apologized for slowing down the iPhones, calling it a "misunderstanding," and offered to sell battery replacements for $29 instead of the usual $79. Apple has said that once the battery is replaced, the iPhone's speed will pick up again.

Non-Compliances, Penalties and Adjudications

1.In **Re Komal Chadha Vs. Serious Fraud Investigation Office**, high Court of Delhi BAIL APPLN. NO. 1740 OF 2022, The accused-petitioner was summoned in the matter through the summoning order made by the Special Judge (Companies Act) stating thatshe was the director of PPPL (first accused), being the wife of Suman Chadha, who was the other director of the company.

The gravamen of the offences alleged under section 447 of the Companies Act, 2013 was that the company, which was engaged in the trade of plastic granules, indulged in cash sales, in fictitious sale of food grain and in creation of accommodation/adjustment accounting entries, apart from misuse of cheque discounting facilities. It was also alleged that the company manipulated financial statements, to project substantial

Growth in its revenues, to mislead banks, so as to induce them to extend and enhance credit limits, which monies were not used towards the business activity of the company but were diverted and siphoned-off to other entities, with no genuine underlying business transactions, thereby indulging in fraudulent diversion of funds to sister concerns.

This order which was based upon the criminal complaint filed by the SFIO under section 212(15), showed that the role ascribed to the petitioner was that of being an 'officer who was in default' within the meaning of section 2(60), since the petitioner was a director of the company and was liable for the affairs of the company under section 212(14).

Hence, petitioner being accused sought regular bail in the matter.

It was held that since there was no allegation against petitioner either intimidating any witnesses or tampering with evidence or otherwise interfering in course of investigation, she was to be admitted to regular bail.

2.In **Re Usha Martin Telematics Ltd. Vs. Registrar of Companies C.R.R. 494 OF 2019, High Court Of Calcutta**, the petitioner company applied to Reserve Bank of India for being registered as Core Investment Company (CIC) pursuant to Core Investment Companies

(Reserve Bank) Directions, 2011 following which Reserve Bank of India sought certain clarifications and documents from petitioner company.

A meeting of Board of Directors of company was held and in course of preparing minutes of said meeting in compliance with section 118(1), it was erroneously recorded in minutes that company submitted application with Reserve Bank of India for its de- registration as NBFC and registration as a CIC. Such recording was an inadvertent/typographical error as company was not a registered Non-Banking Financial Company (NBFC) at relevant time and question of de-registration as NBFC did not arise, however, said error was detected by company subsequently and in a meeting of its Board of Directors said error was rectified.

A complaint case was filed by opposite party before Special Court, for offence punishable under section 118, read with section 448.

It was held that the typographical/inadvertent error in recording of minutes which was rectified subsequently could under no stretch of imagination be termed as an offence, far less an offence under provisions of Companies Act as alleged. The complaint lodged by opposite party did not prima facie reflect intent to deceive, gain undue advantage or injure interest of company or any person connected thereto on part of petitioners and, therefore, proceeding in respect of complaint case was liable to be

quashed.

3.In **Re Doha Brokerage & Financial Services Ltd. Vs. Registrar of Companies C.P. NO. 13 (KOB) OF 2020** National Company Law Tribunal, Kochi Bench, it was held that the petitioner sought compounding of offence punishable under section 450, wherein petitioner-company allotted equity shares to its subsidiary company in violation of section 19 (Subsidiary Company not to Hold Shares in its Holding Company), each officer in default as members of Board of Directors was to be subjected to a fine of Rs. 5000 as a deterrent for not repeating default in future and offence was ordered to be compounded subject to remittance of compounding fee imposed.

4.In **Re Pahuja Takii Seed Ltd. Vs. Registrar of Companies, NCT of Delhi & Haryana Company Appeal (AT) NOS. 80 TO 83 OF 2018** National Company Law Appellate Tribunal, New Delhi, in this matter it was held that there is no bar on preferring a singleapplication for compounding same offence committed during different financial years by company and its officers.

5.In **Re S. Satyanarayana Vs. Energo Masch Power Engineering & Consulting (P.) Ltd. Criminal Appeal Nos. 516 - 518 Of 2010**, Supreme Court of India, In this case it was heldthat

even if a number of persons are accused of offences under a special enactment such as Companies Act and as also IPC in respect of same transaction or facts and evenif some could not be tried under special enactment, it is Special Court alone which would have jurisdiction to try all offences based on same transaction to avoid multiplicity of proceedings.

Here, the Special Court shall be deemed to be a Court of Session or the court of Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be and the person conducting a prosecution before a Special Court shall be deemed to bea Public Prosecutor.

6.M/S Kodagu Heritage Facts of the case

M/s Kodagu Heritage is a private limited company which was incorporated on April 11, 2017. An order was filed by the adjudicating authority because the company had violated Section 12 of the Companies Act, 2013.

As per Section 12(2) of Companies Act, 2013 the company, as soon as it is incorporated, shall furnish to the registrar the verification of registered office within thirty days in Form INC-22. But the company filed the form after the three years that's on January 1, 2019. The company and its officers in default had admitted that they have violated the provision of Section 12(2) of Companies Act, 2013. The adjudicating authority issued a notice to the company and its officers in default to appear before the authority along with their representatives before September 5, 2019, in the chamber of a registrar of the company. The authorised representative was present on said date but the notice was not signed by all the directors. According to Section 12(8) of Companies act, 2013, if a company and officer in default contravenes the provisions of Section 12 of Companies Act, 2013 shall be liable to pay a penalty of INR 1000 for every day during which the default continues but it shall not exceed INR 1 lakh.

Order

The company and its officers in default are liable to pay INR 1 lakh each. As per Section 454(1) and (3) of Companies Act, 2013 and considering the delay of 621 days they have imposed of a penalty of INR 1 lakh on the company and its directors and are required topay the amount on MCA portal and proof of payment to be produced within thirty days from the date of receipt of order. An appeal shall be filed as per Section 454(1) and (3) ofCompanies Act, 2013 to the regional director within sixty days from the date of order of adjudicating authority and it shall be submitted in the prescribed form and with prescribed fees.

7.Ms Joy Ice Cream (Bangalore) Private Limited

Facts of the case

Ms Joy Ice Cream (Bangalore) Private Limited was incorporated on July 25, 1996. The matter before the adjudicating authority is as per Section 12(1) of Companies Act, 2013 acompany shall, within thirty days of its incorporation, have registered office which shall be capable of receiving and acknowledging all the communications and notices which areaddressed to it. In case there is a change in the registered office of the company, the company shall give notice of change in the registered office within thirty days after the date of incorporation and shall submit in Form INC 22 to the registrar. On the verificationof the record, the authority came to the conclusion that it has not filed the Form INC 22. When the office issued a letter on July 27, 2018, for seeking reply with regard to complaints received against the company. The letter was returned unserved with no suchfirm. The adjudicating authority issued a notice to the company and the officers in defaultunder section 454 of Companies Act, 2013 for violation of Section 12 of Companies, Act 2013.

Order

The Company and its officers in default were called upon along with the representatives to present before the registrar of companies. But none of them was present on the said date. The adjudicating authority under section 454(3) of Companies act, 2013 issued a penalty of INR 1 lakh to each director and the company and were required to pay the amount on MCA portal and proof of payment to be produced within thirty days from thedate of receipt of order.

In case a company does not pay the penalty within ninety days as specified under section454(8) of Companies Act, 2013 the company shall be liable to pay a fine which shall not be less than INR 25 thousand but may extend to INR 5 lakhs. An officer in default or any other person is in default shall be punishable with imprisonment which may extend to six months or with a fine which shall not be less than INR 25,000 but which may extend to INR 1 lakh or with both.

8.Order for Penalty under Section 454 for violation of Section 173 of the Companies Act 2013 In The Matter Of Narangs International Hotels Private Limited

Facts about the Case

The Company, filed application for adjudication of penalties for offence under Section 454of the Companies Act, 2013 for violation of provisions of Section 173(1) of the CompaniesAct, 2013. Whereas, every company shall hold the first meeting of the Board of Directorswithin thirty days of the date of its incorporation and thereafter hold a minimum number of four meetings of its Board of Directors every year in such a manner that not more thanone hundred and twenty days shall intervene between two consecutive meetings of the Board.

As per the application and records of this office, it is noticed that the Company has failed to hold a minimum number of four meetings of its Board of Directors every year in such a manner that not more than one hundred and twenty days shall intervene between two consecutive meetings of the Board during the financial year ended 2020-21. Further, the MCA vide circular dated 24.03.2020 extended the number of days to 180 days. However, the number of days between the two consecutive meetings of the Board of Directors, i.e. between 13.12.2019 and 11.09.2020 was 273 days which is 93 days more than the prescribed 180 days accordingly, there was contravention of Section 173 of the Companies Act, 2013. The delay in days is calculated from 10.06.2020 instead of 13.12.2019 till 11.09.2020 as per extension of 180 days by the Ministry. Thus, there was a delay of 943 days in conducting the Board Meeting.

Therefore, the Regional Director in exercise of power conferred under sub-Section 3 of Section 454 of the Companies Act, 2013 had issued hearing notice dated 18.03.2021, to the Company and Officers in default for giving an opportunity to be heard and for submissions in the matter, if any. In response to the hearing notice, representative of the Company, appeared 25.03.2021 and gave consent to pass necessary orders as per the provisions of the Companies Act, 2013.

Factors to be taken into account by the Adjudicating Officer:- While adjudging quantum of penalty under Section 173(4) of the Act, the Adjudicating Officer shall have due regard to the following factors, namely:

The amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of default.

The amount of loss caused to an investor or group of investors as a result of the default.

The repetitive nature of default.

With regard to the above factors to be considered while determining the quantum of penalty, it is noted that the disproportionate gain or unfair advantage made by the Noticee or loss caused to the investor as a result of the delay on the part of the Noticee to redress the investor grievance are not available on record.

Further, it may also be added that it is difficult to quantify the unfair advantage made bythe Noticee or the loss caused to the investors in a default of this nature.

Order

Having considered the facts and circumstances of the case and after taking into accountthe factors above, penalty of Rs.25,000/- (Rupees Twenty Five Thousand only} on each of its Directors for violation of provisions of Section 173 of the Companies Act, 2013 was imposed.

9.Order for Penalty for Violation of section 39(4) of the Companies Act, 2013 R/w Rule 12(1) of Companies (Prospectus and Allotment of Securities) Rules 2014. In The Matter of Sunshakti Solar Power Projects Private

Facts of the case:

The company and its director(s) have suo-moto filed application vide e-form GNL-1 dated 19.11.2021 for compounding of offence under the provisions of section 441 of the Companies Act, 2013, however, as the matter was dealt with adjudication under section 454 of the Act, the subject company submitted a letter to this office dated 12.04.2022 andmade request to treat the said e-form GNL-1 as filed for adjudication, The petition submitted by company stated as under:- During the financial year ended 31.03.2018, thecompany issued 37,500, 10% Compulsorily Convertible Debentures with face value of Rs, 10,000/- each amounting to Rs, 37,50,00,000 on Private Placement basis, pursuant to section 62 and section 42 r/w Companies (Prospectus and allotment of securities) Rules 2014 of the Act details of which are as under

Name of Allottee	No. of CCDs issued	Nominal value of CCDs/-	Total amount	Date of approval of Board	Date of shareholder approval
Sky Power Southeast Asia Ill Investment Limited	37,500	10,000	37,50,00,000	05.09.2017	30.09.2017

The company approved the issuance of 37,500 10% Compulsorily Convertible Debentures by passing special resolution in its Annual General Meeting held on 30.09.2017 and Letterof offerin form PAS-4 was circulated to the offeree accordingly. The company allotted the CCDs to allottess namely Skypower Southeast Asia Il Investment Limited vide dated 06.01.2018 after receiving subscription money in its escrow account. The necessary e-form PAS:3 (Return of Allotment} for allotment of 37,5000 10% Compulsorily Convertible Debentures was filed on 31.03.2018. Further, the company and officers in default submitted their reply on 20th June 2022 in response to the show cause notice issued by this office.

Further, an authorized Representative of the Company appeared on 09.11.2022 for hearing on behalf of company.

The default in the instant case was related to the delay in filing of Return of allotment (Form PAS-3) and Letter of offer (in PAS-4) by 69 days and 151 days respectively. The authorized representative submitted that the company will submit written submission regarding delay filing of Letter of offer (in Form PAS-4) within 7 days from the date hereof. The default regarding aforésaid forms has been made good by the company. However, the delay in filing of PAS-3 has been admitted.

Further, company submitted written submission wherein stated that delay in filing of PAS-4 by 151 days was unintentional and also request to grant relief pursuant to Rule 13 of the Companies (Share Capital and Debentures) Rules, 2014 in filing of offer letter in form PAS-4 by delay of 151 days.

Adjudication of penalty
In the instant case, the default relating to late filing of return of allotment was not subjectof penalty under section 42 (10) of the Act as on the date of the default. As default relating to delay in allotment of securities was not recovered within such provision, this default will instead lead to penalty under section 39(5) for violation of section 39 (4) r/w Rule 12(1) of Companies (Prospectus and Allotment of Securities) Rules 2014.
Now in exercise of the powers conferred and having considered the reply submitted by the noticee(s) in response to the notice(s) issued to company, Regional Director hereby imposed the penalty on the company and its officers in default for violation of section 39 (4) r/e Rule 12(1) of Companies (Prospectus and Allotment of Securities) Rules 2014.

10. Ignorance of law is not an excuse for escaping from liability of violation of law.

The Appellant, Mega Resources Limited, is aggrieved by the order dated 13.08.2014 passed by the Adjudicating Officer, SEBI imposing a penalty of Rs. 2,00,000/- under Section 15A(b) of the SEBI Act and Rs. 50,00,000/- under Section 15 H(ii) of the SEBI Act for failure on the part of the appellant to comply with the provisions of Regulation 7(1)read with Regulation 7(2) and Regulation 11(1) read with Regulation 14(1) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

The appellant has admitted that pursuant to the acquisition of 25000 equity shares through off-market transactions the shareholding of the Promoters/Promoter Group of the Company had increased from 50.46% to 60.46% of the Target Company. This triggered Regulation 11(1) of the erstwhile SAST Regulations along with the requirement of submission of certain disclosures under Regulation 7(1) and 7(2) of the erstwhile Regulations. It is admitted by the appellant that the non-compliance with the disclosure requirements in respect of acquisition of shares and failure to make an open offer to the shareholders of the Company was due to lack of awareness of the erstwhile regulations on the part of the Appellant and purely unintentional and without any malafide intentions.

However, it is trite law that ignorance of law will not excuse the appellant to escape the liability of violating the law nor ever absolve the wrongdoer of his crime or misconduct. Further, the appellant contended that in the matter of imposition of penalty, the Section 15(H)(ii) of the SEBI Act, 1992 was amended dated October 29, 2002 and the penalty for non-disclosure of acquisition of shares and takeovers was enhanced from a maximum of Rs.5 lakh to Rs.25 crore. It is argued that since the violation in Appeal was committed in February, 2001, the appellant would be governed by the erstwhile provisions of Section 15H(ii) of the SEBI Act, which existed on the date of violation in question.

Decision

It is true that the maximum monetary penalty imposable for non-disclosure of acquisition of shares and takeovers under the erstwhile SEBI Act on the date of violation by the Appellant was Rs. 5 Lakh and by the amendment dated October 29, 2002 it is up to Rs. 25 Crore or three times of the amount of profits made out of such failure, whichever is higher. However, the moot point in this connection to be noted is that as on October 29, 2002 the obligation to make disclosure and public announcement under Regulations 7(1) read with 7(2) and 11(1) read with 14(1) continued. Therefore, because the violation was continued even after October 29, 2002, the appellant has been rightly imposed penalty under the amended provisions of Section 15H(ii) of the SEBI Act. Since the punishment imposable now for such non-disclosure and public announcement is up to Rs. 25 Crore, SAT finds that the penalty of Rs. 50 Lakh is just and reasonable and not disproportionate. The contention of the appellant in this regard is, therefore, liable to be turned down. Therefore, in the peculiarity of the facts and circumstances of the case and, in particular, the continuity of the obligation to make disclosure and public announcement, the penalty of Rs. 50 lakh is upheld and the appeal is dismissed.

7. RELIEF AND REMEDIES

1• In P P Varkey v. STO (1999) 114 STC 224 (Bom HC DB), it was held that once an offence is compounded, penalty or prosecution proceeding cannot be taken for same offence. • In S Viswanathan v. State of Kerala (1993) 113 STC 182 (Ker HC DB), it was held that once the matter is compounded, neither department nor assessee can challenge the compounding order. Department cannot reopen the matter on the reason that actual suppression was much higher.

• Compounding is compromise between the administrator and person commit offence for an agreement not to prosecute one who has committed offence [Reliance Industries Ltd. 1997]. The accuse and Administrator (ROC) make a joint application to the NCLT/RD that the parties have come to terms and the case may not be proceeded further.

2. In **Re Cibersites India (Pvt) Ltd. CP - 42/2021 dated 13.05.2021**, NCLT Bengaluru Bench, it was held that where applicant company filed application under section 441 for compounding of offences under section 125, 138 and 142, since nature of violations committed were not criminal in nature and same were committed unintentionally, lenient view was to be taken and ad valorem fine for all offences/violations was to be imposed.

3.In the matter of **Capital Small Finance Bank Ltd Vs. Registrar of Companies Co No. 52/Chd/Pb/2021 NCLT Chandigarh Bench dated 26.11.2021**, it was held that where applicant company had inadvertently and under bona-fide mistake breached thresholds provided under section 67(3) of the Companies Act, 1956 and report of RoC stated that there were no complaints and there was no investigation pending and it could be seen from records of applicant company that an exit option to all identified current holders of security has been made, applicant having made an application suo moto and stated that this or similar offences had not been compounded during last three years, it would be reasonable to compound offence under section 67(3)

4.In the case of **UW International Training & Education Centre for Health Private Limited, C.A. No. 16/59/2017 (NCLT Delhi)** in a suo motu application wherein in an application for compounding of an offence punishable under sec 56(6) of the Companies Act 2013 (relates to delay in issuing share certificates to subscribers of shares), the bench held that the minimum amount of fine specified in the penal clause of the section would apply only when a criminal

court is seized of the matter and a compounding authority is not constrained by the said provision. Compounding of an offence could be done even by admonishing the defaulter or by issuing a warning.

5.In the case of **Registrar of Companies cum Official Liquidator vs. Gyan Chand Agarwal, Company Appeal (AT) No. 249 of 2018**, in relation to an offence falling under sec 165 of the Companies Act, 2013 the NCLT New Delhi Bench had imposed a compounding fee of INR 10,00,000/- considering that the applicant had violated the stipulation under sec 165 for 849 days. In the appeal before NCLAT, preferred by the Department, the NCLAT observed that the fine imposed should not be less than INR 5000/- which can be extended to INR 25,000/- for every day after the first during which the contravention continues and the default continued for a period of 849 days w.e.f. 01st April, 2015 to 18th July, 2017

• NCLAT observed that the Tribunal had no jurisdiction to reduce the fine to less than the minimum prescribed for the offence prescribed under the aforesaid provision and hence imposed INR 42,45,000/- (Rupees Forty Two Lakh Forty Five Thousand Only) on the respondent/petitioner to be payable within a period of 45 days.

6.In the matter of Pahuja Takii Seed Ltd. and Ors. Vs ROC, NCT of Delhi & Haryana

NCLAT, New Delhi vide company appeal No. 80 of 2018 in the matter arising out of orders dated 16th February, 2018 passed by the NCLT, New Delhi Bench- III in various company applications, vide its order dated 27th September, 2018.

Fact of the Case: The Appellants, Companies along with its Officers, filed applications under Section 441 of the Companies Act, 2013 for compounding of the offence(s) committed by them, on the ground that corrective measures have already been taken, which have been dismissed/disposed of by the National Company Law Tribunal (hereinafter referred to as "Tribunal"), New Delhi Bench-III, by common order dated 16th February, 2018.

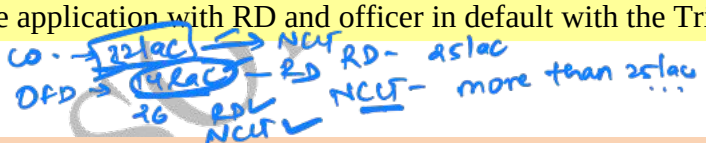
Observations: The questions require for determination in these appeals are:

i.Whether the Companies Act, 2013 bars filing of a joint application for compounding of offence by a defaulting company along with its officers in default? NCLAT observed that in absence of any specific bar of 'joinder of parties' or joinder of separate cause of actions in preferring a compounding application, joinder of parties for same offence is permitted. Since facts leading to any noncompliance under the Act on the part of a company and its officers in default will be same, any suggestion to the contrary will only lead to multiplication of proceedings and different findings, which is not desirable.

ii. Whether the Companies Act, 2013 bars filing of a joint application for compounding of the same offence committed in different years? There is no bar on preferring a single application for compounding the same offence committed during different financial years by the Company and its Officers, nor there is any bar on a joint application being preferred by a Company along with its Officers in default. It is trite that procedures are deemed to be permitted unless expressly prohibited.

iii. Whether the Tribunal has jurisdiction to compound offences where the fine prescribed for such offence are less than its monetary jurisdiction? NCLAT had clarified that Section 441 only puts a restriction on the power of the 'Regional Director' and 'the authorised officers of the Central Government' permitting them to compound the offences wherein the maximum amount of fine does not exceed five lakh rupees (now Rs. 25 Lakhs) and is punishable with 'fine only'. No such fetter has been put on powers of the Tribunal, which is the main forum for such compounding of offences, the other forum of 'Regional Director' and 'Officer of the Central Government' being alternative but restricted by extent of quantum of punishment. The NCLAT held that, the Tribunal has the powers to compound all the offences irrespective of any pecuniary limit as evident.

iv. How to quantify the limit of Rs. 25 lacs in order determine the jurisdiction of RD? In this regard, RD has the jurisdiction to compound an offence which has a maximum fine of Rs. 25 lacs. Now the question arises how to determine this quantum whether it is per compounding application or per applicant. The NCLAT has not specifically answered this question but has re-affirmed the observation of NCLT that the quantum of Rs. 25 lacs shall be determined based upon each applicant and is not required to be consolidated of all the applicants where joint application is moved. So, for calculating the monetary jurisdiction, fine shall be calculated on the basis of each of the application and shall not be aggregated. If in any case, quantum of fine on a company is less than Rs 25 Lacs but more than the said amount for officer in default, then either a joint application can be filed with Tribunal or company can file the application with RD and officer in default with the Tribunal.



7. In the matter **of Schneider Electric IT Business India Private Limited & Ors.**, the question is whether offence can be compounded even though prosecution was pending against the Applicants ?

It is contended that, even though prosecution was launched against the Applicants, yet violation can be compounded by the Tribunal and no prior permission from the Special Court for Economic Offence at Bangalore is required and the power given to the Company Law Board (now Tribunal) under section 621A(1) of the Companies Act, 1956 which is independent of exercise of powers by the court under sub-section (7) and all offences other than those which are punishable with imprisonment only or with imprisonment and also fine can be compounded by the Tribunal without any reference to the sub-section (7) even in cases where the prosecution is pending in a criminal court. Thus, it is clear if offence is compounded after institution of the prosecution, then Registrar has to bring to the notice of the Court where prosecution is pending in writing and on such notice of composition the Court shall discharge the company or its officers against whom prosecution is pending.

8. In the matter of **RSPL Limited & Ors.,** the company had filed its cost audit report after a delay of four years of the prescribed time period. The NCLT (Allahabad bench) held that the application for compounding is to be allowed as the company, though acted belatedly, had shown its bona fide effort to make good the default.

9.Prakash Gupta v. Securities and Exchange Board of India, dated July 23, 2021

Fact of the Case: The appellant is being prosecuted for an offence under Section 24(1) of the Securities and Exchange Board of India Act, 1992 ("SEBI Act"). The appellant sought the compounding of the offence under Section 24A. By an order dated 15 November 2018, the Additional Sessions Judge – 02 Central District at Tis Hazari Courts, Delhi ("Trial Judge"), rejected the application, upholding the objection of the Securities and Exchange Board of India that the offence could not be compounded without its consent. Mr. Prakash Gupta, director of Ideal Hotels & Industries Limited ("Company"), was accused of having engaged in price rigging and insider trading during the Initial Public Offer ("IPO") of the Company, in violation of Regulations 4(a) and (e) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995, along with other provisions of the Takeover Regulations, 1994 and 1997.

On 27 June 1996, SEBI received a complaint from Mr Vijay Miglani alleging that certain Delhi/Bombay based brokers had, on the instructions of the Company, purchased its shares and that huge deliveries were kept outstanding in the grey market. SEBI also received an anonymous complaint in October 1996, alleging price rigging and insider trading in the scrip of the Company.

During its investigation, SEBI obtained the details of the top brokers who traded in the shares of the Company during this period on the Delhi Stock Exchange and Bombay Stock Exchange, and also of their clients who had made significant purchases or sales on the scrip. Consequently, SEBI came up with the name of six entities who had purchased approximately 51 per cent of the 38 lac equity shares on offer during the period between 28 January 1996 and 29 February 1996. They were found to have continued buying shares even after that period, and had ultimately purchased 28,38,000 equity shares, which was approximately 75 per cent of the post issue floating stock of the Company. As such, it was assumed that these entities were, therefore, responsible for the upward price movement in the scrip.

A criminal complaint was filed against Mr. Gupta before the Trial Court alleging the above violations and an Adjudicating Officer under the SEBI Act was appointed. Prior to any orders in the aforesaid proceedings, the Chairman of SEBI, under the provisions of the SEBI Act, allowed Mr. Gupta to purchase the shares of the shareholders at a higher price than that fixed during the IPO, thereby supposedly resolving the issue. However, the AO, pursuant to noting the offences committed by Mr. Gupta, levied a fine of INR 20,000 on him and other co-promotors. This penalty too was paid by the accused.

Thereafter, a compounding application under Section 24A of the SEBI Act was filed by Mr. Gupta before the Trial Court which was objected to by the High Powered Advisory Committee ("HPAC") of SEBI. The Trial Court rejected the compounding application on the grounds that SEBI had not provided its consent to the same, which was upheld by the High Court of Delhi. Hence, the present appeal before the Court.

Issue:

Whether under section 24A of the SEBI Act, the express consent of SEBI is required prior to the compounding of offences by the Securities Appellate Tribunal or the court before which proceedings are pending?

Observation:

While a plain reading of the section 24A does not provide for the consent of SEBI, it was considered whether such consent should be read into Section 24A, on the grounds of casus ommisus.

In the present case, it is evident that Section 24A does not stipulate that the consent of SEBI is necessary for the SAT or the Court before which such proceedings are pending to compound an offence. Where Parliament intended that a recommendation by SEBI is necessary, it has made specific provisions in that regard in the same statute. Section 24B provides a useful contrast. Section 24B(1) empowers the Union Government on the recommendation of SEBI, if it is satisfied that a person who has violated the Act or the Rules or Regulations has made a full and true disclosure in respect of the alleged violation, to grant an immunity from prosecution for an offence subject to such conditions as it may impose.

The second proviso clarifies that the recommendation of SEBI would not be binding upon the Union Government. In other words, Section 24B has provided for the exercise of powers by the Central Government to grant immunity from prosecution on the recommendation of SEBI. In contrast, Section 24A is conspicuously silent in regard to the consent of SEBI before the SAT or, as the case may be, the Court before which the proceeding is pending can exercise the power. Hence, it is clear that SEBI's consent cannot be mandatory before SAT or the Court before which the proceeding is pending, for exercising the power of compounding under Section 24A.

Judgement: In the present case, we are clearly of the view that the nature of the allegations against the appellant are such so as to preclude a decision to compound the offences. The factors as listed in the Frequently Asked Questions in relation to the 'Guidelines for Consent Order and for considering requests for composition of offences' dated April 20, 2007 should be adhered to;

The opinion of SEBI and its HPAC must be given due deference as the same indicates their position on the effect that non-prosecution of the offence may have on market structures. The Securities

Appellate Tribunal or the courts should only differ from the opinion of SEBI/ the HPAC, if it has reasons to believe that the said opinion is mala fide or manifestly arbitrary;

The principle behind the compounding proceeding should be that the aggrieved party has been restituted and that it has consented to end the dispute. Since the aggrieved party may not be before the court, and that the offences are usually of public nature, it becomes even more essential to rely on SEBI's opinion to understand if restitution has taken place; and

Even if restitution has taken place, but the offence is of public character and nonprosecution of the same would affect the public at large, such offence should not be compounded.

The judgment of the Supreme Court in Prakash Gupta is significant as it not only underlines the importance of the role played by SEBI in market regulation and addressal of investors, but also appreciates the intention of the legislators while doing so. Further, it fills in the lacune that earlier existed by providing detailed guidelines on the factors to be take into consideration while passing an order under Section 24A of the SEBI Act. Shareholders of the Kapashi Commercials Ltd. on 10th July, 2020, a BSE Listed company, have settled with SEBI a case of alleged violation of takeover norms by paying over Rs. 34 lakh amount towards settlement terms. They have filed an application with the SEBI proposing to settle the case for alleged violation of SAST (Substantial Acquisition of Shares and Takeovers) Regulations in respect of change in their shareholding in Kapashi Commercials. It was alleged that the four individuals made delayed disclosures to the company and BSE, about the change in their shareholding in Kapashi Commercials.

9. Audit Engagement

Offer:

1. PQS Company, a trading company, is looking to engage an internal auditor for the financial year 2022- 2023. The company sends an email to ABC & Associates (Practicing Company Secretaries Firm), outlining the scope of the audit, the timeframe for completion, the audit fee, and any other terms and conditions that are relevant.

"We would like to engage your services to conduct an internal audit for the financial year 2022-2023. The audit should cover all aspects of our Internal control effectiveness; Statutory, procedures and control compliance; Implementation of recommendations; Corporate governance; Systems development; Process improvement; and Value for money and Best Value. The audit should be completed within four months of engagement. We are willing to pay a fee of INR 5,00,000 for this engagement. Please let us know if you are willing to accept this engagement, and if so, we can proceed with the necessary paperwork."

Acceptance:

2.ABC & Associates (Practicing Company Secretaries Firm) reviews the offer and responds with an acceptance that includes any additional terms or conditions they may have. "Thank you for offering us this internal audit engagement. We are pleased to accept this engagement under the terms outlined in your email. In addition, we would like to include a clause that states that any findings from the audit will be presented before the audit commitee. We will also require access to all financial records and documentation related to this engagement. If this is agreeable to you, we can proceed with the necessary paperwork."

Once both parties have agreed to the terms of the engagement, they can proceed with the necessary paperwork, such as an engagement letter.

2.In the matter **of Kingston Cotton Mill Co. (No. 2) [1896] 2 Ch. 279**, the case involved a dispute between the shareholders and the directors of a company over the appointment of an auditor. The shareholders had passed a resolution to appoint an.) auditor, but the directors refused to comply with the resolution. The honourable court held that the shareholders of a company have the right to appoint an auditor, and that the directors of the company cannot interfere with this right.

Once auditor is appointed by the S|H, director must proceed with the appt.

3.Sun Moon Limited is a listed company and operates in the manufacturing sector. In January 2023, the company received a notice from the Securities and Exchange Board of India (SEBI) stating that

Sun Moon Limited had failed to comply with several provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. The SEBI notice also required the company to appoint a practicing company secretary to conduct a secretarial audit of its records and submit a report to SEBI.

The board of directors of Sun Moon Limited have decided to appoint a M/S RR & Associates (Practicing Company Secretaries Firm) to conduct the secretarial audit and passed the Board resolution in their meeting.

However, Mr. Abhinav (shareholder) of the company challenged the appointment of the secretarial auditor in court, stating that the board did not have the authority to appoint the auditor and that the appointment should have been made by SEBI. The matter was reffered to court.

The court examined the provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, and found that the regulations did not specify who had the authority to appoint a secretarial auditor. However, the court noted that the regulations required the secretarial auditor to be appointed by the company to conduct the audit.

Based on these findings, the court ruled that the board of directors of Sun Moon Limited had the authority to appoint the secretarial auditor, and that the appointment was valid. The secretarial audit was conducted, and the report was submitted to SEBI. Sun Moon Limited took corrective measures to rectify the non-compliances identified during the audit.

3.In **Re R. Swarup Reddy Vs. M.N Pratap Reddy, NCLAT New Delhi, Company Appeal (AT) Nos. 77 & 121 Of 2018,** in this matter CLB appointed Independent auditors for auditing books of account the company. Auditors completed their work and claimed fees of Rs. 36.16 lakh. The director company stated that fees claimed by auditors was on higher side and at best they were entitled for a fees of Rs. 8 lakh.

The Court observed that said auditors had not only done audit but also did investigation, particularly with reference to related party transactions entered at instance of appellant with its two sister companies for period from 1-4-2007 to 31-3- 2014. Further, amount claimed by said auditors was supported by number of days spent and composition of people working on assignment. It was also observed that appellant had paid nearly Rs. 62 lakh for auditing of sister concerns for same period. Therefore, fees claimed by auditors were reasonable. Court was justified in directing the company to remit to said auditors entire claimed amount.

4.In **Re, Ssay & Associates v. Institute of Chartered Accountants of India, HC of Delhi W.P. NO. 7674**, it was held that there is no requirement for an auditor to secure a no objection certificate from previous auditor as only requirement is that auditor, who accepts position as an auditor, must communicate with previous auditor about same.

5.XYZ Limited is a listed company and recently hired a new secretarial auditor firm (M/s AA & Associates) to replace the previous auditor firm (M/s BB & Associates), who had been serving the company for two years. The M/s AA & Associates was made responsible for ensuring compliance with various regulations and guidelines and preparing audit report.

Challenge:

The primary challenge faced by XYZ Limited was to smoothly execute the transition of responsibilities between new and old auditors to communicate effectively with the M/s BB & Associates. This was crucial, as the new auditor would need access to all previous records, reports, and other information related to the company's secretarial audit.

Solution: To address this challenge, the company's management decided to set up a meeting between the M/s AA & Associates and the M/s BB & Associates. During the meeting, the new auditor would have the opportunity to ask any questions, clarify any doubts, and obtain access to all relevant records and reports.

Results:

The communication between the previous secretarial auditor and the new auditor was successful as a written communication in form of email has been made by M/s AA & Associates to previous auditor, and the M/s AA & Associates was able to obtain all necessary information to perform their duties effectively. The information provided by the previous auditor was extremely useful, as it helped the new auditor to identify any areas of concern and address them promptly.

10. Audit Principles and Techniques

1.Materiality: An auditor is conducting an audit of a company's financial statements. The auditor determines that a certain error in the financial statements is immaterial and does not need to be corrected. However, the error is later discovered to be material and the company faces legal action as a result. This case highlights the importance of properly assessing materiality and the potential consequences of misjudging it.

2.Risk Assessment: An auditor is conducting an audit of a manufacturing company. During the risk assessment process, the auditor identifies a significant risk related to inventory management. The auditor then designs audit procedures to test the controls related to inventory management and discovers that there are significant weaknesses in the company's internal controls. This case highlights the importance of proper risk assessment and the need to design appropriate audit procedures based on the identified risks.

3.Lehman Brothers: Lehman Brothers' bankruptcy in 2008 is another example of the failure of audit principles and techniques. The company's financial statements did not accurately reflect its true financial position, and its auditors failed to identify the risks associated with the company's mortgage-backed securities.

A case study on Audit Techniques:

4. ABC Corporation is a manufacturing company that produces and sells widgets. The Company has recently undergone a change in management, and the new CEO has expressed concerns about the accuracy of the financial statements prepared by the previous management team. The company has engaged an independent auditor to perform an audit of its financial statements.

The auditor begins the audit by performing an initial assessment of the company's internal controls. The auditor reviews the company's accounting policies and procedures, interviews key personnel, and performs walkthroughs of the accounting system to identify any weaknesses or deficiencies in the internal control system.

Based on the initial assessment, the auditor decides to use a combination of audit techniques to obtain sufficient and appropriate evidence to support the audit opinion. First, the auditor decides to perform analytical procedures. The auditor compares the company's current year financial statements to the prior year financial statements to identify any significant changes or trends. The auditor also performs ratio analysis to assess the company's liquidity, profitability, and financial stability.

Next, the auditor decides to use sampling. The auditor selects a sample of sales transactions from the company's sales ledger and tests them to verify that the sales were properly recorded in the accounting records. The auditor also selects a sample of inventory items and performs a physical count to ensure that the inventory quantities and values are accurately reflected in the financial statements.

The auditor also decides to use computer-assisted audit techniques (CAATs). The auditor uses data analysis software to scan the company's accounting records for any anomalies or trends that may indicate errors or fraud. The auditor also uses the software to test the completeness and accuracy of the inventory and accounts payable balances. Throughout the audit process, the auditor maintains open communication with the company's management team and informs them of any findings or concerns. At the conclusion of the audit, the auditor issues an audit opinion based on the evidence obtained through the various audit techniques used.

In this case study, the auditor used a combination of audit techniques to obtain sufficient and appropriate evidence to support the audit opinion. The auditor's use of analytical procedures, sampling, and computer- assisted audit techniques helped to identify any potential risks or concerns in the financial statements, which allowed the company to address these issues and improve its financial reporting process.

5. XYZ Limited is a small manufacturing company that produces and sells widgets. The company has engaged an independent auditor to conduct an audit of its financial statements. The auditor begins by conducting preliminary preparation activities to ensure that the audit is conducted effectively and efficiently.

The auditor obtains a good understanding of XYZ Limited's business operations, industry, and environment. This includes understanding the Company's organizational structure, key personnel, accounting policies and procedures, and risk management processes. The auditor also assesses the Company's financial performance and identifies any unusual or complex transactions. The auditor assesses the risks associated with XYZ Company's business operations and financial reporting. This includes identifying the risks of material misstatement, evaluating the effectiveness of internal controls, and determining the materiality threshold for the audit.

Based on the assessment, the auditor determines the scope of the audit and the audit approach to be taken. The auditor develops an audit plan that outlines the scope and objectives of the audit, the audit approach, the timeline, and the budget for the audit. The audit plan is based on the understanding of the company and the risks identified. The auditor also consults with the company's management team to obtain their input on the audit plan and to establish a timeline for the audit. The auditor assigns audit team members based on their experience, skills, and knowledge of XYZ Limited's business operations and industry. The auditor communicates with the company's management team to discuss the audit plan, obtain necessary information, and establish a timeline for the audit. The auditor also obtains a

representation letter from the company's management team. The auditor develops audit programs that outline the specific audit procedures to be performed during the audit. The audit programs are based on the audit plan and the risks identified. The auditor also ensures that the audit programs are updated to reflect any changes in the audit plan or risks identified during the audit. The auditor establishes an audit file to document the audit plan, the audit programs, and the evidence obtained during the audit. The audit file is organized to facilitate the review of the audit work by the auditor's supervisor or peer reviewers.

By conducting these preliminary preparation activities, the auditor is able to plan and execute the audit effectively and efficiently. The auditor's understanding of XYZ Company's business operations, industry, and environment, along with the assessment of risks, enables the auditor to develop an appropriate audit plan and select the appropriate audit procedures to obtain sufficient and appropriate audit evidence.

6.XYZ Company Ltd is a manufacturing company that specializes in producing high-tech electronics. The company has recently experienced a decline in sales and profits, and the management team has requested an audit to identify the root cause of the problem. The auditor decides to use a questionnaire to gather information from the auditee (the company) to gain a better understanding of the company's operations, processes, and risks.

• Designing the questionnaire: The auditor designs a questionnaire that is tailored to the specific risks and issues identified in the audit planning process. The questionnaire includes questions about the company's sales and marketing strategies, production processes, supply chain management, financial management, and risk management practices.

• Administering the questionnaire: The questionnaire is sent to key personnel within the company, including the sales and marketing team, the production team, the supply chain management team, and the finance team. The auditee is given a deadline to complete and return the questionnaire.

• Analyzing the responses: The auditor analyzes the responses to the questionnaire to identify areas of concern and potential risk. The responses reveal that the company has been experiencing quality control issues in its production processes, which has resulted in a high rate of defective products. The auditor also identifies weaknesses in the company's supply chain management practices, including inadequate supplier vetting and a lack of contingency planning.

• Conducting follow-up interviews: Based on the responses to the questionnaire, the auditor conducts follow-up interviews with key personnel to gather additional information and clarify any areas of concern. The auditor also requests additional documentation to support the auditee's responses to the questionnaire.

• Reporting the findings: The auditor prepares a report that summarizes the findings of the audit, including the areas of concern identified through the questionnaire and follow-up interviews. The report includes recommendations for improvement in the company's production processes and supply chain management practices

Using a questionnaire in the audit of XYZ Company Ltd allowed the auditor to gather information in a standardized and systematic manner. The questionnaire revealed important information about the company's quality control issues and weaknesses in its supply chain management practices. The findings from the questionnaire and followup interviews were used to develop recommendations for improvement, which the company can use to address the root cause of the decline in sales and profits.

An auditor is conducting an audit of a company's financial statements. As part of the audit, the auditor is reviewing the company's bank statements to ensure that all transactions are accurately recorded in the company's financial records. The auditor notices a payment of Rs 10 Lacs to a vendor that does not match any of the vendor payments recorded in the company's accounting system.

To investigate this discrepancy, the auditor uses cross referencing to compare the bank statement with the company's accounting records. The auditor identifies the check number on the bank statement and searches for it in the company's check register. The auditor finds that the check was issued to a different vendor for a different purpose than the one recorded on the bank statement.

The auditor then reviews the company's invoices and purchase orders to determine if there were any other payments made to the vendor listed on the bank statement. The auditor discovers that the vendor did provide services to the company, but the payment was not recorded in the accounting system. Based on these findings, the auditor concludes that the payment was made to the vendor for services rendered and that the payment should be recorded in the company's financial statements. The auditor then makes the necessary adjustments to the financial statements to reflect the correct amount of the payment.

Bank statement & A/C records

In this case, cross referencing helped the auditor to identify a discrepancy between the bank statement and the accounting records, and to investigate the cause of the discrepancy. By comparing and matching data from different sources, the auditor was able to ensure the accuracy and completeness of the financial statements, and to identify any errors or omissions that needed to be corrected.

7. An external auditor was engaged to conduct an audit of a manufacturing company's financial statements. As part of the audit, the auditor used statistical sampling techniques to select a sample of transactions to test for accuracy and completeness. The auditor used a combination of random sampling and systematic sampling to select the sample. The sample was selected from the company's sales and purchases transactions, as these transactions were considered to be material and had a high risk of misstatement.

After selecting the sample, the auditor examined the transactions to verify their accuracy and completeness. The auditor found that a few of the transactions in the sample were not properly documented, and there were some discrepancies in the amounts recorded in the company's records compared to the supporting documents.

Based on the results of the sample, the auditor projected the findings to the entire population of sales and purchases transactions and concluded that there were material misstatements in the financial statements. The auditor then communicated the findings to the company's management and recommended adjustments to the financial statements.

The management of the company agreed with the auditor's findings and made the necessary adjustments to the financial statements. The auditor then issued an unqualified opinion on the financial statements, indicating that the financial statements were fairly presented in all material respects.

This case study demonstrates the importance of audit sampling in conducting an effective audit. By using statistical sampling techniques, the auditor was able to select a representative sample of transactions and test them for accuracy and completeness. The results of the sample allowed the auditor to draw conclusions about the entire population of transactions and detect material misstatements in the financial statements.

8. An external auditor was engaged to conduct an audit of a retail company's financial statements. As part of the audit, the auditor reviewed the company's internal controls to assess their effectiveness in preventing and detecting errors and fraud. The auditor found that the company had several weaknesses in its internal controls. Specifically, the company lacked proper segregation of duties, which meant that a single employee had control over several critical functions, including approving and recording transactions, and reconciling accounts.

The company also had inadequate documentation of transactions and did not have policies and procedures in place to ensure that transactions were properly authorized and recorded. In addition, the company did not perform regular physical inventory counts to ensure that inventory was accurately recorded in the financial statements.

As a result of these weaknesses, the auditor was unable to rely on the company's internal controls to support the accuracy and completeness of the financial statements. The auditor communicated the weaknesses to the company's management and recommended improvements to the internal controls.

The management of the company agreed with the auditor's findings and took corrective action to strengthen the internal controls. The company implemented a new policy of segregation of duties, ensuring that critical functions were assigned to different employees. The company also established policies and procedures for authorizing and recording transactions and performed regular physical inventory counts.

The auditor then re-assessed the internal controls and found that the improvements made by the company were effective in addressing the weaknesses identified in the audit. The auditor was then able to rely on the internal controls to support the accuracy and completeness of the financial statements.

This case study highlights the importance of strong internal controls in preventing and detecting errors and fraud in financial reporting. By identifying weaknesses in the internal controls and recommending improvements, the auditor helped the company to strengthen its financial reporting processes and provide accurate and reliable financial statements.

9. An auditor was conducting an audit of a large manufacturing company in India. As part of the audit, the auditor reviewed the electronic records maintained by the company, as required by the Audit Trail system implemented by the MCA.

During the review, the auditor noticed that there were several entries in the electronic records that did not match the company's financial statements. The auditor also observed that there were multiple changes made to the electronic records, but there was no documentation explaining the reasons for the changes.

To investigate the discrepancies, the auditor used the Audit Trail system to review the changes made to the electronic records. The system provided a detailed record of all changes, including the date, time, and person making the change. The auditor also reviewed the company's financial statements to identify the source of the discrepancies. The auditor found that the company had understated its revenues by recording them in a different financial year than when they were actually earned. The auditor also discovered that there were several unauthorized changes made to the electronic records to conceal the irregularities.

The auditor reported the findings to the company's management and recommended that the discrepancies be corrected and the electronic records be updated accordingly. The company's management cooperated with the auditor and took corrective action to address the issues identified.

As a result of the audit, the company improved its internal controls and financial reporting processes to prevent similar issues in the future. The Audit Trail system implemented by the MCA was instrumental in uncovering the irregularities and ensuring that the company took corrective action.

This case study demonstrates the importance of the Audit Trail system implemented by the MCA in promoting transparency and accountability in corporate reporting and detecting financial irregularities. The system provides a powerful tool for auditors to identify discrepancies in electronic records and to investigate the causes of those discrepancies. It also helps to promote good corporate governance and protect the interests of stakeholders.

10. An auditor is conducting an audit of a bank. The auditor uses statistical sampling to test a sample of loan transactions. The auditor discovers that there are several instances where the bank has not properly assessed the creditworthiness of the borrowers. This case highlights the importance of using appropriate sampling techniques to ensure that audit evidence is representative of the population being tested.

11. An external auditor was engaged to conduct an audit of a technology company's financial statements. As part of the audit, the auditor performed a series of tests on the company's revenue recognition policies and procedures.

During the audit, the auditor found that the company had recognized revenue prematurely for a number of contracts. Specifically, the company had recognized revenue before it had fully delivered the goods or services to the customer, or before it had received full payment from the customer.

The auditor also found that the company had not properly documented the terms of the contracts, making it difficult to determine the correct revenue recognition policies to apply.

As a result of these findings, the auditor communicated the issues to the company's management and recommended adjustments to the financial statements. The management of the company agreed with the auditor's findings and made the necessary adjustments to the financial statements.

The auditor then issued a modified opinion on the financial statements, indicating that there were material misstatements due to premature revenue recognition. The auditor also issued a management letter, outlining the weaknesses in the company's revenue recognition policies and procedures, and recommending improvements.

The management of the company took corrective action to improve the revenue recognition policies and procedures. The company implemented a new system to document the terms of contracts and trained employees on the proper revenue recognition policies to apply.

In the subsequent year, the auditor performed follow-up procedures to test the effectiveness of the improvements made by the company. The auditor found that the improvements were effective in addressing the weaknesses identified in the audit, and the auditor was able to issue an unqualified opinion on the financial statements.

This case study highlights the importance of audit findings in identifying weaknesses in financial reporting processes. By communicating the findings and recommendations to the company's management, the auditor helped the company to make necessary adjustments and improvements to strengthen its financial reporting processes and provide accurate and reliable financial statements.

11. INTERNAL AUDIT AND PERFORMANCE

1. Secretarial Auditor Engagement and Audit Planning in case of Sun Moon Ltd.

• Engagement of Secretarial Auditor

Sun Moon Ltd by receiving consent letter and passing Board resolution has appointed secretarial auditor M/s J J & Associates (Practicing Company Secretaries Firm) Intimation to earlier Incumbent M/s J J & Associates (Practicing Company Secretaries Firm) is appointed as Secretarial Auditor in place of the existing Secretarial Auditor Mr. ABC, M/s J J & Associates shall intimate the appointment to the earlier incumbent in writing

. **• Acceptance of Appointment**

An appointment letter to be issued by the Sun Moon Ltd to M/s J J & Associates along with a copy of the board resolution. Accordingly, the M/s J J & Associates shall confirm acceptance/Rejection (as the case may be) of appointment in writing.

• Preliminary Discussions/Surveys

It is important to have relevant information about the company. The secretarial auditor is expected to take an overview of the operations of the company and interact with the personnel involved to know about the nature of the business. He may opt for surveys for generating information about the company.

• Preliminary Meeting

The preliminary meeting with the senior management and the administrative staff involved in the audit will give a fair idea of what is expected and the manner in which audit activities are to be undertaken. In the meeting the preliminary questionnaire and the initial observations of the secretarial auditor may be put forth and discussed. At this stage time frame of the audit should be determined and finalized. The secretarial auditor shall at this stage discuss the scope and objectives of the audit, gather information on important processes, evaluate existing controls, and plan the audit steps.

• Finalization of Audit Plan and Briefing the Staff

For an efficient and effective audit report it is important to work out an action plan. The work plan involves briefing the audit staff as to allotment of work, fieldwork responsibilities and other roles. The audit plan should comprehensively outline the fieldwork and usage of auditing tools. The review of

controls helps the auditor determine the areas of highest risk and design tests to be performed in the fieldwork section. It is essential that the audit work plan is in adherence strictly with the timelines.

• **Testing, Interviews and Analysis**

The secretarial auditor may use a variety of tools and technology to gather information about the company's operations. It is during this stage that the Secretarial Auditor determines whether the controls identified during the preliminary review are operating properly and in the manner described by the Company. Fieldwork typically consists of interviewing with staff of the company whether formally or informally, reviewing procedure manuals, processes, testing and analysing compliance with applicable policies and procedures and laws, rules, regulations, and assessing the adequacy of controls. This is a crucial stage which relates to significant findings which the secretarial auditor uses while preparing the draft audit report.

• **Working Papers**

Working papers are a vital tool of the audit profession. They are the support of the audit opinion. They connect the management's records and financials to the auditor's opinion. They are comprehensive and serve many functions.

• **Preliminary Report/Audit Summary for Discussions**

The detailed commentary describing the findings and recommended solutions shall be summarised and presented for initial discussions with the management for their insights and clarity. Upon completion of the fieldwork, the auditor to summarize the audit findings, conclusions, and recommendations necessary in the form of the audit report.

• **Audit Report Submission**

The auditor shall prepare the final report based on the field work and working papers to present the audit findings and discuss recommendations for improvements, if any. The Final report shall contain the opinion on the statutory compliances examined by the auditor and shall state whether in his opinion the Company is carrying out / not carrying out due compliances of the applicable provisions of the various corporate laws. A final meeting shall be an opportunity for the management and the auditor to discuss various aspects of the audit report and review management responses. This is an opportunity to discuss how the audit went and any remaining issues to be scrutinized. The final report shall be provided with or without qualifications.

• **Review of audit plan**

As part of Secretarial Audit's self-evaluation program, the secretarial auditor after the completion of the audit work plan shall investigate into the details of how did the audit plan work out, assess the odds and take corrective measures for future audits.

*Audit Plan & Process of Case Western Reserve Office of Internal Audit Services A key function of the Office of Internal Audit Services is to understand, audit, and report to management on how that risk is being managed. Knowing what areas to audit and where to commit resources is an integral part of managing the internal audit function.

To identify areas of potential risk, each year the Office of Internal Audit Services performs a thorough risk assessment of all university management centers, operating units, and significant departments. From this assessment, an Audit Plan is developed and presented to the Audit Committee for approval.

Step 1: Planning The auditor will review prior audits in your area and professional literature. The auditor will also research applicable policies and statutes and prepare a basic audit program to follow.

Step 2: Notification The Office of Internal Audit Services will notify the appropriate departments regarding the upcoming audit and its purpose, at which time an opening meeting will be scheduled.

Step 3: Opening Meeting This meeting will include management and any administrative personnel involved in the audit. The audit's purpose and objective will be discussed as well as the audit program. The audit program may be adjusted based on information obtained during this meeting.

Step 4: Fieldwork This step includes the testing to be performed as well as interviews with appropriate department personnel. Step 5: Report Drafting After the fieldwork is completed, a report is drafted. The report includes such areas as the objective and scope of the audit, relevant background, and the findings and recommendations for correction or improvement.

Step 6: Management Response A draft audit report will be submitted to the management of the audited area for their review and responses to the recommendations. Management responses should include their action plan for correction.

Step 7: Closing Meeting This meeting is held with department management. The audit report and management responses will be reviewed and discussed. This is the time for questions and clarifications. Results of other audit procedures not discussed in the final report will be communicated at this meeting.

Step 8: Final Audit Report Distribution After the closing meeting, the final audit report with management responses is distributed to department personnel involved in the audit, the President, Chief Financial Officer, and CWRU's external accounting firm.

Step 9: Follow-up Approximately six months after the audit report is issued, the Office of Internal Audit Services will perform a follow-up review. The purpose of this review is to conclude whether or not the corrective actions were implemented.

2.Materiality & Risk Assessment

You have been working as a partner in M/s ABC & Associates for six years. M/s ABC & Associates is a medium-sized Practicing Company Secretaries Firm. The firm provides secretarial auditing and internal auditing services. Furthermore, M/s ABC & Associates provides services in the areas such as corporate laws, securities laws & capital market and corporate governance. Most of the clients are in the processed food industry. M/s ABC & Associates has a Client Acceptance Policy that sets out principles to determine whether to accept a new client or a new engagement. These principles are fundamental to maintaining quality, managing risk, protecting the firm and meeting regulatory requirements.

As part of the client acceptance process, M/s ABC & Associates carefully considers the risk characteristics of a prospective client and conducts several due diligence procedures. Before M/s ABC & Associates accepts a new engagement or client, M/s ABC & Associates determines if it can commit sufficient resources to deliver a high quality audit. The approval process is rigorous, and no new audit engagement may be accepted without the approval of M/s ABC & Associates Managing Partner. M/s ABC & Associates dedicates significant time and resources to the strict implementation of their client acceptance policy. All prospective audit engagements are classified as either 'High Risk', 'Moderate Risk' or 'Low Risk'.

M/s ABC & Associates has set up a team to prepare a recommendation to the Managing Partner for every client acceptance decision in FY 2023-2024.

The managing partner of M/s ABC & Associates met the chairman of the audit committee of a company called 'XYZ Ltd' in the last week of March 2023. The chairman indicated that the company has decided to change its current secretarial auditor. For new engagements, the CSAS-1 require that the potential new auditor communicates with the predecessor auditor about the audit engagement.

DETERMINING MATERIALITY

• Identify business risks for the processed food service sector;

• Identify and evaluate the factors important in assessing an audit client's business risk and the risk of material misstatement;

• Identify and understand the implications of key inherent and business risks associated with a new client;

• Determine planning materiality for an audit client;

• Provide support for your materiality decisions.

After you have accepted XYZ LTD as a new client, you are provided with the financial statement of last three years for the purpose of risk assessment.

3. In **Re V. Shankar Vs. Securities and Exchange Board of India SAT Appeal No. 283 Of 2022**, it was held that the Company secretary, as part of his duty and responsibility is only required to authenticate contents indicated in balance sheet or in offer document and is not required to go into veracity of buy back offer document and its legal compliances before authenticating such document and, therefore, company secretary could not be held guilty of making false or misleading open offer which had been approved by board of directors of company.

12. Forming an Opinion and Reporting

1.Adjudication Order in respect of **CHD Developers Ltd. and 3 others in the matter of CHD Developers Ltd. (Adjudication Order: Order/MC/VS/2021-22/13557-13560),** in this matter SEBI initiated adjudication proceedings against CHD Developers Ltd for violations of the SEBI LODR Regulations in respect of disclosure of material false information under the LODR Regulations in relation to the opinion of its Auditor.

Based on audit procedures performed and management explanations provided, the Auditors had submitted a qualified opinion in their Report to the financial statements of the company and did not receive any explanation or evidence from the Company with respect to progress on the qualification made. Instead, the report issued on June 29, 2019 had declared that the Auditors had given an unmodified opinion.

It was observed that as the company failed to disclose its audited financial results as well as the statement of impact of audit qualifications (for audit report with modified opinion) within the stipulated period of 60 days from the end of the financial year, it has violated the provisions of SEBI LODR Regulations. Taking into account the facts and circumstances of this matter, the AO imposed penalty to the company and its officers.

2.ABC Ltd. is a listed company on BSE India. The company has appointed M/s YY & Associates as secretarial auditor for the FY 2021-2022. M/s YY & Associates had issued audit report in Form MR-3. The audit report stated observations. Consequently, directors also furnished explanations to the remarks as below:

Secretarial auditors' observation(s) in secretarial audit report and directors' explanation thereto –

• In respect of observation that the composition of the board of directors was not in compliance with Regulation 17 and 25 of the Listing Regulations and Section 149(3) of the Companies Act, 2013 and that the composition of Audit Committee was not in compliance with Regulation 18 of the Listing Regulations.

It is clarified that considering the stressed situation of the Company, it was difficult to find suitable persons as Independent Directors and with the appointment of new independent directors (including one woman independent director), the Company is compliant with Regulation 17 and 25 of the Listing

17 → 1 woman D, 50% non-exec
25 - 1 D.
18 → AC

Regulations and Section 149(3) of the Companies Act, 2013 with effect from March 16, 2022. Further, due to resignation of two independent directors who were also Audit Committee members, the composition of Audit Committee was not in compliance of Regulation 18 of the Listing Regulations for a period from September 27, 2021 till October 14, 2021. With reconstitution of Audit Committee w.e.f. October 15, 2021, this non-compliance has been rectified.

• In respect of observation that the Risk Management Committee of the Company comprised of 50% of the members who were directors of the Company which was not in compliance of Regulation 21 of the Listing Regulations. It is clarified that 50% of the members were directors only, however as a stricter compliance, the composition of the Risk Management Committee further stands rectified w.e.f October 1, 2021.

• In respect of observation pertaining to non-appointment of Chief Financial Officer (CFO) in compliance with Section 203(4) of the Companies Act, 2013

It is clarified that the Company all along had a Group Chief Financial Officer. The Company appointed CFO w.e.f. June 1, 2021 and accordingly the same stands rectified.

3.ABC Ltd is a listed company. The company has appointed M/s SS & Associates as its secretarial auditor for the FY 2021-2022. The secretarial auditors have conducted the audit and submitted the audit report in Form MR-3 stating that –

During the Audit Period, the Company has complied with the provisions of the Act, Rules, Regulations, Guidelines, Standards etc. mentioned above except to the extent as mentioned below:

a) Board composition: There were non-compliances with the requirements of Regulation 17(1)(a) & (b) of SEBI (LODR) Regulations, 2015 (SEBI LODR) during part of the Audit Period, as the Company did not have requisite number of Independent Directors on its Board, including no woman Independent Director till 13th November, 2021.

The Company made appointment of 4 Independent Directors including one woman Independent Director on 14th November, 2021. Further, the Company made appointment of 1 (one) more Independent Director on 31st December, 2021. The Company has become compliant with the requirements of Regulation 17(1) (a) of SEBI LODR w.e.f. 14th November, 2021 and Regulation 17(1)(b) of SEBI LODR a w.e.f. 1st January, 2022.

b) Audit Committee and Nomination & Remuneration Committee: The Audit Committee and Nomination & Remuneration Committee were not constituted with minimum two Independent Directors as per provisions of Regulations 18 and 19 of the SEBI (LODR) Regulations, 2015 and till 13th November, 2021, as the Company had only one Independent Director on its Board. No meeting of the Audit Committee was convened from 1st April, 2021 to 14th December, 2021. However, mandatory functions of the Audit Committee such as review of quarterly results/annual financial

statements and approval of related party transactions etc. were directly reviewed and approved by the Board.

13. SECRETARIAL AUDIT

1.Non-Reporting of related party transaction led Secretarial Auditor to pay penalty

In the matter of **Sun Pharmaceutical Industries Ltd**, Adjudication Order passed by RoC Gujarat, Dadra & Nagar Haveli dated 28.04.2023

Facts of the case:

On receipt of whistle blower compliant in respect of Related Party Transaction, money diversion from Sun Pharmaceutical Ltd to Aditya Medisales Ltd and other group companies, the Inquiry of M/s Sun Pharmaceutical Industries Ltd under section 206(4) of the Companies Act, 2013 was ordered by Ministry of Corporate Affairs for FYs 2014 to 2018. During the inquiry it was observed by the inquiry officer that Secretarial Auditor of the company has not reported "Aditya Medisales Ltd.' as related party.

As per section 204 of the Companies Act, 2013 the Secretarial Auditor plays a crucial role in laws for effective compliances. The object of Secretarial Audit is evaluation and form an opinion and to report to the shareholders as to whether, the company has complied with the applicable laws comprising various statutes, rules, regulations, guidelines, followed by board processes also to report on existence of compliance management system.

The Practicing Company Secretary has to examine the transactions during the period of audit to identify whether any fraud element is present in the transaction. Also that, the ICSI has issued Guidance Note for Secretarial Audit. As per the Guidance Note the Secretarial Auditor is need to adhere the checklist to review the related party transaction.

In this matter, the instead of complying his duty as per the Guidance Note in respect of related party transaction u/s 188, the Secretarial Auditor has merely relied on the statutory Auditors' report, which led to non-compliance on his part pertaining to non-reporting of related party transaction.

Decision:

After considering the facts and submissions, the adjudicating officer had reasonable cause to believe that the Secretarial Auditor of the company has failed to discharge their duty as per provisions of section 143(14) read with section 188 and 204 of the Companies Act, 2013 read with ICSI Guidance Note on Secretarial Audit issued by ICSI and imposed a penalty on Secretarial Auditor.

2.RoC imposes penalty on company, directors and company secretary for Noncompliance of SS-1

In the matter of M/s Polaris India Private Limited (ROC /D/ADJ Order /118(10)/ Polaris/ 328 to 333) adjudication order by the Registrar of Companies, NCT of Delhi & Haryana on 19th January 2022. The company was under obligation to comply with the Secretarial Standard -1 relating to meetings of the board of directors issued by the Institute of Company Secretaries of India which inter alia requires that the company shall hold at least four meetings of its board in each calendar year with a maximum interval of one and hundred and twenty days.

The company has failed to comply with Secretarial Standard – 1 in respect of holding at least four meetings of its board as well as the gap between board meetings. Upon realizing the default / non-compliance committed by the company, the company has suo-moto filed an application via e-form GNL-1 for adjudication of penalty.

Accordingly, Registrar of Companies, upon receipt of the application for adjudication received from the company, in the interest of natural justice, before imposing the penalty on the company, its directors who is in default, or any other person, as the case may be, a reasonable opportunity of being heard was given to them by issuing a notice for personal hearing. On the day of the personal hearing, the Company secretary of the company appeared before the authorities on behalf of the company and its directors / officers and explained that the defaults are of technical nature, which were committed inadvertently and without any mala-fide intentions.

The Registrar of Companies / Adjudicating Officer, in the exercise of the powers conferred on him and having considered the facts and circumstances of the case besides written and oral submissions, imposed penalty on the company and its officers including the Company Secretary amounting to Rs. 1.60 Lacs in total

3.Mr. CS is appointed as a Company Secretary of Flowers Pvt Ltd. Mr. CS have to conduct the audit for the financial year 2022-23. Mr. CS is required to draft the guidelines for verification of Board Composition & Board Process as per the CSAS-4 (Auditing Standard on Secretarial Audit).

Board Composition the auditor shall verify:

♠ Overall composition of the Board including the minimum and maximum strength of the Board as per provisions of the Companies Act, 2013, SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015, Articles of Association and provisions of other Acts/rules/regulations as may be applicable to the Company.

♠ Optimum combination of Executive, Non-executive, Independent, Nonindependent, retiring, non-retiring, woman, nominee in the Board as per provisions of the Companies Act, 2013, SEBI (Listing

Obligations and Disclosure Requirements) Regulations, 2015, Articles of Association, agreement with Lenders/Investors and provisions of other Acts/rules/regulations as may be applicable to the company.

♠ Eligibility criteria including qualifications of Directors in accordance with the provisions/principles laid down in the Companies Act, 2013, SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, Articles of Association and provisions of other Acts/rules/regulations as may be applicable on the Company.

♠ The constitution and composition of Committees of the Board.

Board Processes:

The Auditor shall verify that the decisions of the Board and its Committees are taken and recorded in compliance with applicable laws, rules, regulations, guidelines, standards and defined internal processes, if any. In case of conflict between various provisions the stricter compliance to be verified.

3.ENRON – Largest American energy company. Fortune-100 named ENRON "America's Most Innovative Company" for six consecutive years. Kenneth Lay CEO and his wife Linda sold all the shares held by them in the company worth $ 90 million @ $ 90 per share. After CEO's wife completed sale of all shares between 10 am and 10.20 am, share price crashed less than a dollar around 10.30 am due to announcement of filing under chapter 11 for bankruptcy.

4.Galleon – Raj Rajarathnam obtained inside information from Rajath Gupta, a member of the Board of Goldman Sachs that Warren Buffet's Berkshire Hathaway was going to make a crucial investment in Goldman Sachs. Raj Rajarathnam was convicted to pay fine $ 92.8 million and sentenced to 11 years imprisonment

5.M/s ABC & Co., Practicing Company Secretaries were the Secretarial Auditors of **Opoco Ltd**. During the secretarial audit, the Secretarial Auditor was verifying the board approvals and other documentation for the loan taken by the Company and they found that a fraud of Rs. 3.5 crores was committed against the Company, by its officers which was not observed by the Statutory Auditors of the Company. In this background, below mentioned are the duties and responsibilities of Secretarial Auditors under the Companies Act, 2013.

The obligations and duties of the Secretarial Auditors in the mentioned case under Companies Act, 2013 are as provided under rule 13 of the Companies (Audit and Auditors) Rules, 2014:

If an auditor of a company, in the course of the performance of his duties as auditor, has reason to believe that an offence of fraud, which involves or is expected to involve individually an amount of

rupees one crore or above, is being or has been committed against the company by its officers or employees, the auditor shall report the matter to the Central Government as under:

♠ the auditor shall report the matter to the Board of Directors or the Audit Committee, as the case may be, immediately but not later than two days of his knowledge of the fraud, seeking their reply or observations within forty-five days.

♠ on receipt of such reply or observations, the auditor shall forward his report and the reply or observations of the Board of Directors or the Audit Committee along with his comments (on such reply or observations of the Board or the Audit Committee) to the Central Government within fifteen days from the date of receipt of such reply or observations;

in case the auditor fails to get any reply or observations from the Board or the Audit Committee within the stipulated period of forty-five days, he shall forward his report to the Central Government along with a note containing the details of his report that was earlier forwarded to the Board or the Audit Committee for which he has not received any reply or observations;

♠ the report shall be sent to the Secretary, Ministry of Corporate Affairs in a sealed cover by Registered Post with Acknowledgement Due or by Speed Post followed by an e-mail in confirmation of the same;

♠ the report shall be in the form of a statement as specified in Form ADT-4;

♠ as per Sec 143(15), any non-compliance of this duty by any auditor, cost accountant, or company secretary in practice, attracts penalty, which shall be

1. in case of a listed company five lakh rupees; and

2. in case of any other company one lakh rupees

Fraud detection and reporting requires the practicing company secretary to focus beyond compliance.

6.In the matter of **Globe Motors Limited v. Mehta Teja Singh & Company**, the Delhi High court observed that although an agreement in which a director was interested could not said to be invalid in view of compliance with the requirements of the Act, yet it is only a formal aspect of compliance with the statutory provisions; the basic question is as to the conduct of the director and whether it satisfies the test considering their fiduciary relationship to the company. Justice Sachar further observed that the directors are expected to display utmost good faith towards the company in their dealings with the company or on behalf of the company; they should not use the company's money or other property or information or other matters in their possession in order to gain any advantage to themselves. Therefore, a practicing company secretary should not be satisfied only with compliance during

secretarial audit. He needs to look beyond and satisfy himself that the transactions which have taken place during audit period do not contain any fraud element.

14. INTERNAL AUDIT AND PERFORMANCE

1.HDFC Bank's Risk Management Framework: Robust and stress-tested framework

Our robust Risk Management framework and the independence of our risk management function set us apart as a responsible banker. It enables the execution of our strategic priorities without taking on undue financial and non-financial risks. Our risk policies and processes and their effective implementation through technology and governance enabled us to endure and even grow in these highly uncertain and disruptive times. Stress testing is one of the key risk management tools we use to mitigate and manage the existing as well as emerging risks.

2.In the matter **of M/s. Indu Nissan Oxo Chemical Industries Limited, ROC-GJ/ADJorder/Section 454** /Indu Nissan /Sec.138/ 2022-23 /6504 – 6506 dated 02.01.2023 ROC Gujarat has passed an adjudication order pertaining to consequences of default while complying with the provisions of section 138(1) of the Companies Act 2013 relating to the appointment of internal auditor in specified class (es) of companies.

Facts of the case:

The Ministry of Corporate Affairs has ordered to inquiry of the subject company under section 206 of the Companies Act 2013. During the course of an inquiry, it was observed that the company is the eligible company to appoint an internal auditor and the company failed to appoint an internal auditor which is the mandatory requirement under section 138 of the Companies Act 2013 read with Rule 13 of the Companies (Accounts) Rules, 2014. The company has failed to appoint an internal auditor for the period from 1st April 2014 to 31 March 2021 (for seven financial years) and violated the provision of section 138 of the Companies Act 2013.

Consequently, ROC issued a show cause notice to the company and its directors. The company replied that the company has been shut down since 1999 and it had stopped its production completely and the company had been a sick unit since the year 2002. Further the company was also registered with Board for Industrial and Financial Reconstruction (BIFR) under the Sick Industrial Companies (Special Provisions) Act 1985. The ROC issued Personal hearing notice to give a reasonable opportunity of being heard to the company and its directors.On the scheduled date of the hearing neither the company nor KMP had appeared for the hearing and also not submitted any reply / letter, in spite of further reminder / written notice issued to the company / its director. Hence, the Registrar of Companies / Adjudicating Officer proceeded on the matter in the absence of a reply of the company /

non- appearance of any of the company officials even after providing the sufficient opportunity to the Company / director.

Decision:

Based on the forgoing facts and circumstances, the Registrar of Companies/ Adjudicating Officer came to the conclusion that the company and its director committed the default of section 138 by not appointing an internal auditor for a period of seven years and therefore, it is concluded that the company and its director in default were liable for penalty under section 454 of the Companies Act 2013 for default under section 138 of the Companies Act 2013.

Since none of the company officials appeared and presented themselves for the personal hearing in spite of reminders and in the absence of any response from the company, the Registrar of Companies / Adjudicating Officer went ahead on this matter ex-parte and passed the adjudicating order as per the provisions of Section 454 (3) of the Companies Act 2013 read with sub-rule 11 of Rule 3 of the Companies (Adjudication of Penalties) Rules 2014.

The Registrar of Companies / Adjudicating Officer imposed penalty on the company and its directors amounting to Rs. 1.4 lacs.

3.In the matter of **United Phosphorous Ltd. and Ors. vs. DCIT** and Ors. (28.09.2011 - ITAT Mumbai), it was recognised by the court that the company has proper internal control and the internal auditor also seems to verify majority of the expenses and report to the management in the case of any adverse finding.

4.Toshiba – a case of internal audit failure

In July 2015, Toshiba Corp president Mr. Hisao resigned after investigations found that the company inflated earnings by $1.2 billion during the period 2009-2014. The company Toshiba was one of the early adopters of corporate governance reforms initiated in Japan.

Some of the observations of the independent investigation committee of the company on internal audit demand discussion and debate.

The investment committee observed:

• The fault in internal audit in Toshiba was that it focused on consultation service rather than assurance service.

• In Toshiba, the audit committee was neither capable nor independent. Internal Audit can function independently only if audit committee is capable, independent and effective, and internal auditor

reports to the audit committee. The three external members of audit committee had no knowledge of finance and accounting. The ex-CFO, who was the CFO during the timeframe when accounting irregularities occurred, was the only whole time member of the audit committee.

• A corporate culture existed in Toshiba whereby employees could not act contrary to the intent of their superiors. In such a culture an upright internal auditor cannot survive, particularly if he is not independent of the management.

Internal auditor is the 'eyes and ears' and 'go-to man' of the audit committee. Therefore, internal audit failure leads to corporate governance failure

5. WorldCom Scam, USA

In 1983, Bernard Ebbers and 3 other investors formed Long Distance Discount Services, Inc. based in Jackson, Mississippi and in 1985, Ebbers was named chief executive officer. The company acquired over 60 telecommunications firms and in 1995, it changed its name to WorldCom.

The company became a public company as a corporation in 1989 as a result of a merger with Advantage Companies Inc. The company name was changed to LDDS WorldCom in 1995. The company grew rapidly in the 1990s, after completing several mergers and acquisitions.

6. Accounting Manipulation

Beginning modestly during mid 1999 and continuing at an accelerated pace through May 2002, Ebbers, CFO Scott Sullivan, Controller David Myers and general accounting director Buford "Buddy" Yates used fraudulent accounting methods to disguise WorldCom's decreasing earnings in order to maintain the company's stock price by capitalizing expenses, it exaggerated profits.

In 1999, revenue growth slowed and the stock price began falling, in 2000.

WorldCom began classifying operating expenses as long-term capital investments. Hiding these expenses in this way gave them another $3.85 billion. Broadly financial statement fraud was accomplished primarily in two ways:

• "line costs" (interconnection expenses with other telecommunication companies) as capital expenditures on the balance sheet instead of expenses.

• Inflating revenues with bogus accounting entries from "corporate unallocated revenue accounts".

On July 1, Worldcom provided the SEC with a statement detailing what the company knew to date about its accounting problems.

Role of Internal Auditors as a Whistleblower

After tips were sent to the internal audit team and accounting irregularities were spotted in MCI's books, the SEC requested that WorldCom provide more information. The SEC was suspicious because while WorldCom was making so much profit, AT&T (another telecom giant) was losing money.

Cynthia Cooper, WorldCom's vice president - internal audit, instructed her internal audit team to audit all capital expenditures. Internal audit team also found $500 million computer expenses having been entered in the books without any documents. There was also another $2 billion in questionable entries. WorldCom's audit committee was asked for documents supporting capital expenditures, it could not produce them. Senior vice president and controller admitted to the internal auditors that they weren't following accounting standards and admitted to inflating its profits by $3.8 billion over the previous five quarters. When internal audit team informed about what happened, both the company's current auditor, KPMG, and its former auditor, Andersen, agreed that accounting entries were not in accordance with Generally Accepted Accounting Principles (GAAP).

After reviewed by the company's audit committee, WorldCom's board terminated accepted the resignation of senior vice president and controller. The SEC suit came a day later.

A little over a month after the internal audit began, WorldCom filed for bankruptcy.

7.Mindtree Limited

The performance evaluation of statutory auditors and internal auditors is done every year. The audit Committee in turn reviews he performance of Statutory Auditors as well as Internal Auditors and provides their feedback and suggestions to the management. The CFO/Financial Controller conveys the feedback to the auditors based on the outcome of performance evaluation and Audit Committee's suggestions.

8.OLYMPUS CORPORATION FRAUD

JAPAN Background

Olympus was established on 12th October 1919. It initially specialized in microscope and thermometer businesses. In 1949, the name was changed again to Olympus Optical Co., Ltd. in an attempt to enhance its corporate image.

In 2003, the company made a fresh start as Olympus Corporation. In Greek mythology, Mt. Olympus is the home of the twelve supreme gods and goddesses. Olympus was named after this mountain to reflect its strong aspiration to create high quality, world famous products. Tsuyoshi Kikukawa was the board chairman and CEO.

Accounting Manipulation

British-born Michael Woodford was an Olympus veteran of 30 years, and previously executive managing director of Olympus Medical Systems Europa. As European Director in 2008, Woodford had noticed the "strange goings-on at the company" such as the Gyrus acquisition, which should have been within his scope but was instead handled from Tokyo. Woodford had set out to resign over the matter but stayed with Olympus after being reassured on the acquisition and being promoted to oversee Olympus' European businesses and appointed to the main Olympus board.

FACT

A Japanese monthly news magazine features economic information for readers. The magazine provides investigative reports. FACTA in the August 2011 issue said that Olympus had acquired from 2006 to 2008 three small companies — Altis, a medical waste recycling company, Humalabo, a facial cream maker, and News Chef, which makes plastic plates and containers for microwaves for US$773 million, but wrote down most of their value within the same fiscal year. The publication said that all three companies continued to post losses.

Apparently irregular payments for acquisitions had resulted in very significant asset impairment charges in the company's accounts and had come to Woodford's attention. He also wanted answers about the acquisition in 2008 of Gyrus Group Limited, a British medical equipment maker, for U.S. $2.2 billion.

Olympus had issued more than $600 million in preference shares "directly to AXAM Investment Limited, a company registered in the Cayman Islands, which is described as 'the portfolio manager for AXES Investment Limited LLC.'

Woodford wanted to know why Olympus had paid AXAM so much money to apparently "advise" Olympus on the acquisition of Gyrus. KPMG report, stated that Olympus hadn't accounted for the shares given to AXAM, and "in our opinion proper accounting records have not been maintained."

Olympus defended itself against allegations of impropriety when Woodford confronted Tsuyoshi Kikukawa, chairman of the Olympus board. Kikukawa called a special board meeting in October at company headquarters in Tokyo. The meeting began at 9:07. Kikukawa fired Woodford and didn't allow him to respond. The meeting ended at 9:15 a.m.

9.CEO blowing the whistle on his own Company

As a CEO, Woodford commissioned PricewaterhouseCoopers (PwC) to investigate the relationship and transactions with AXES/AXAM surrounding the acquisition of Gyrus. PwC released its report in October.

The PwC report also stated that "there appears to be potential misstatements made in Gyrus' 2009 audited accounts and potential unlawful financial assistance provide by Gyrus to Olympus in relation to the transaction."

After reaching London, Woodford then delivered the six letters and the replies together with the PW report to the Britain's Serious Fraud Office, the FBI, the U.S. Department of Justice; the Japan Securities, Exchange and Surveillance Commission; the Tokyo Metropolitan Police; and the Tokyo Prosecutors Office. "Olympus needs a complete and utter forensics accounting,"

On 26 October, 2011 Kikukawa was replaced by Shuichi Takayama as chairman, president, and CEO. On 8 November 2011, the company admitted that the company's accounting practice was "inappropriate" and that concealment of more than 117.7 billion yen ($1.5 billion) money had been used to cover losses on investments dating to the 1990s.

The company blamed the inappropriate accounting on former president Tsuyoshi Kikukawa, auditor Hideo Yamada and executive vice-president Hisashi Mori.

The Verdict

In July 2013, Kikukawa and Mori were both sentenced to 3 years in prison, 5 years suspended. The auditor who had been party to the fraud was sentenced to 2.5 years in prison, 4 years suspended. Olympus was fined 700 million yen ($7 million USD). In April 2014, six banks filed a civil suit against Olympus over the fraud, seeking an additional 28 billion yen in damages.

10.CASE STUDY ON FRAUDS AND ROLE OF INTERNAL AUDITOR SATYAM COMPUTER SERVICES FRAUD, INDIA

Background

Satyam Computer Services Limited was founded in 1987 in Hyderabad, by Ramalinga Raju. Raju served as Chairman, his brother, B. Rama Raju, served as the Managing Director and Chief Executive Officer. It specialised in outsourcing IT and business process services. It began as a small company with only 20 employees quickly grew to become India's leading outsourcing company, employing over 53,000 people and serving over 650 companies worldwide. The company was listed on stock exchanges around the world, including the New York Stock Exchange and the Bombay Stock Exchange.

On 16 December 2008, the Satyam board made the decision to invest $1.6 billion in Maytas Properties and Infrastructure without the agreement of their shareholders. Later it came to light that this was a last ditch attempt to fill the fictitious assets of Satyam with real ones acquired through Maytas. This move was highly criticised by investors and led to the company's stock plummeting on the New York Stock Exchange. As a result, the board of Satyam reversed the decision.

The Satyam fraud went on for a number of years and involved both the manipulation of balance sheets and income statements. Audit failure was a key factor in the failure of Satyam. The fraud was so apparent that it should have been spotted much earlier by auditors, before it grew to such a serious extent.

Accounting Manipulation

Revenues, operating profits, interest liabilities and bank balances were grossly inflated to show the company in good health. It presented a growing problem as facts had to be doctored to keep showing healthy profits for Satyam that was growing in size and scale.

Every attempt made to eliminate the gap failed. On 7th January 2009, the chairman of Satyam, Raju resigned, confessing that he had manipulated the accounts in several forms. Raju made shocking disclosure to the Board of Directors of Satyam that the financial statement contained

- Inflated Cash and Bank Balance of Rs.50.4 Billion.
- Non-existent accrued interest of Rs.3.76 Billion.
- An understated liability of Rs.12.30 Billion on account of funds arranged by Raju.
- An overstated Debtors position of Rs.4.90 Billion.

The company's global head of internal audit, V.S. Prabakar Gupta created fake customer identities, generated fake invoices against their names to inflate revenue and illegally obtained loans for the company.

Satyam overstated its income nearly every quarter over the course of several years in order to meet analyst expectations. Fake invoices and bills were created using software applications such as 'Ontime' that was used for calculating hours put in by an employee.· A secret programme was allegedly planted in the source code of the official invoice management system creating a user id 'Super User' with the power to hide or show the invoices in the system.

Raju explained his reasons for inflating revenues in his letter to the board:

"As the promoters held a small percentage of equity, their concern was that poor performance would result in a takeover, thereby exposing the gap." For the sake of meeting ambitious targets as well as gaining profits, Satyam lied to the stakeholders and the market about their financial health, attracting more investment into the company.

Raju also created numerous bank statements to advance the fraud using his personal computer. He falsified the bank accounts to inflate the balance sheet with balances that did not exist. Furthermore, Raju created 6000 fake salary accounts and took the money from these accounts after it had been

deposited. The cash so raised was used by Maytas (reverse name of Satyam) to purchase several acres of land across Andhra Pradesh to ride on a booming realty market.

Role of Internal and External Auditors

Internal audit system in Satyam was ineffective as they did not discover that Raju and Gupta collaborated to hide the company's true financial information. Satyam had claimed $1.04 billion on its balance sheet in non-interest-bearing deposits. Pricewaterhouse (Pw) completely relied on the fixed deposit receipts and bank statements provided by the Chairman's office, without confirming the bank deposit independently. Pw failed to fulfill its role as an auditor as they should have noticed this large amount of bank balance and carried out further verification and substantive testing.

PwC audit fees increased by 5.7 times over a period of four years (from 2004 to 2008). These inflated audit fees suggests that auditors may have been bribed in order to keep the fraud from being discovered and to allow Satyam to continue their accounting irregularities.

The Verdict

Central Government disbands Satyam board, to appoint its own 10 directors. On 9 April 2015, Raju and nine others were found guilty of collaborating to inflate the company's revenue, falsifying accounts and income tax returns, and fabricating invoices, among other findings, and sentenced to seven years imprisonment by Hyderabad court. Unlike Enron collapse, in March 2012 Tech Mahindra, the information technology (IT) arm of Mahindra and Mahindra Ltd (M&M), completed merger process with Satyam Computer Services, creating the fifth-largest IT company based in India, four years after acquiring the Hyderabad-based firm.

15. Value Creation

1Mr. X has reviewed M/s. ABC & Co. having three partners Mr. A, Mr. B and Mr. C. Neither Mr. A, Mr. B nor Mr. C will be able to do review of Mr. X. same is the case with Sole Proprietor / members practicing in Individual capacity.

2. If the client of M/s XYZ ask Board to get the Practice Unit Peer Reviewed and then in this case cost of Peer Review shall be borne by the client .

3. Mr. R (Peer Reviewer) received a Peer Review Assignment then in this case he can also refuse to accept / perform the Peer Review assignment after giving a valid reason to the Board.

The refusal of assignments can be made on the following grounds:

– Conflict of Interest between the Reviewer and PU

– Ill Health – Other work or pre-occupations

– Reviewer feels that he cannot act independently in that Firm/or with Reviewee due to past connections or so.

4. Mr. Q (Peer Reviewer) received a Peer Review Assignment in this case he shall be allowed to take assistance from any one Qualified Assistant. The Qualified Assistant should be member of the Institute and has undergone adequate training in the manner considered appropriate by the Board in terms of clause 15.1 of the Guidelines.

5. Mr. X has reviewed M/s. ABC & Co. having three partners Mr. A, Mr. B and Mr. C . Mr. X shall be bound by Confidentiality Agreement with the Peer Review Board. If the Reviewer misuses the information disclosed by PU, he may be subject to disciplinary action by the Institute.

16. Value Creation

1.In the case of **Nirma Industries and Anr. v. Securities Exchange Board of India,** Nirma Industries sought withdrawal of an open offer under Regulation 27(d) of the Takeover Regulations on the ground that the promoters of the target company had committed a fraud and had embezzled funds. Nirma Industries applied to SEBI to allow the withdrawal of the open offer. The Supreme Court however rejected all the contentions of Nirma Industries and held that an investing company is responsible for its own decision to invest and should carry out appropriate diligence. The Court stated that Nirma Industries were aware of various litigations, the plea of ignorance of litigation and dangers of investment was thereby denied.

2. Total Energies said its $3.1 Billion Exposure In **Adani Group** taken after Due Diligence, Full Compliance

Total Energies SE states its exposure of $3.1 billion, or about 2.4% of the company's employed capital, in Adani Group was taken in full compliance and with due diligence.

Since 2018, the French energy major has invested in four Adani entities: 50% each in unlisted Adani Total and AGEL23, 37.4% in listed Adani Total Gas Ltd., and 19.75% in Adani Green Energy Ltd.

All investments in Adani's entities were undertaken in full compliance and with due diligence, which "were consistent with best practices", the company said in a statement on February 03, 2023. "All relevant material in the public domain was reviewed, including the detailed disclosures to regulators required under applicable laws."

3.In 1998, a German company **Daimler Benz merged with Chrysler Group** for a value of $36 billion. However, the merger was not successful and the value of Chrysler fell to $7.4 billion after a couple of years. According to various experts, Daimler failed to conduct a proper due diligence process which resulted in over-valuation of the target company.

4.Amazon began due diligence to buy MX Player

In March 2023, Amazon.com Inc. made advanced talks to acquire MX Player, the video streaming platform owned by Times Internet. Amazon owns the subscription streaming service Prime Video and an ad-supported MiniTV service in India. Amazon launched the free MiniTV service in May 2021 within the Amazon shopping app for phone users. In 2018, Bennett Coleman & Co Ltd (BCCL)-owned Times Internet, acquired MX Player for `1,000 crore (around $140 million at that time) to mark its entry into video streaming.

The US e-commerce giant has hired one of the Big Four accounting firms to carry out due diligence of MX Player exclusively, and the process is expected to take 30-40 days. As per the anticipations of experts, a deal could happen within two months if all goes well.

Earlier, Times Internet was asking for over $100 million for MX Player, while Amazon's internal team valued it at around `500 crore ($60 million). The deal is likely to be in the range of `600-900 crore.

5.In September 2008, **UAE based Etisalat acquired 45% stake in the Indian telecom operator Swan Telecom** (renamed as Etisalat DB) for $900 million. A year later, the Supreme Court of India revoked 2G licences awarded to Swan Telecom due to impropriety in obtaining the licences. The due diligence process carried out by Etisalat failed to detect any impropriety in obtaining telecom licenses. Etisalat faced significant financial losses of upto 827 million dollars and later took an exit from the company. Thereafter, Etisalat issued legal proceedings against the promoters of Swan Telecom (renamed as Etisalat DB) on the grounds of fraud and misrepresentation.

6.PhonePe's due diligence on ZestMoney was unsatisfactory

Recently, in April 2023 the Walmart-backed PhonePe has called off its deal with Zest Money over due diligence concerns. The due diligence that PhonePe carried for nearly six months while evaluating the much- anticipated acquisition of ZestMoney did not meet its bar.

ZestMoney facilitates Buy Now Pay Later (BNPL) loans by disbursing the purchase amount from the lending partner directly to the merchant, allowing the customer to repay the lender in installments. PhonePe initiated talks to acquire ZestMoney to bolster its digital lending forays.

7. Hindustan Motors, European partner complete due diligence for EV project

In October 2022, Hindustan Motors Ltd and its European partner have completed due diligence for the proposed electric two-wheeler project. The Joint Venture (JV) is likely to launch the electric vehicles in the next financial year at Hindustan Motors' Uttarpara plant in West Bengal.

According to the company's statement, after the formation of JV, around six months are required to start a pilot run. The structure of the JV is being finalised, including the proportion of equity to be held by the partners.

8.Silicon Valley Case Study

Silicon Valley has gained a reputation for being home to numerous “unicorn” companies, startups valued at over $1 billion. While these companies may appear to be the future of tech innovation, they often have inflated valuations that are not supported by their financial performance. This is partly due to a lack of due diligence from investors who are eager to get in on the ground floor of the next big thing.

Due diligence is the process of conducting a thorough investigation into a company’s financial, legal, and operational status before investing in it. It helps investors assess the risks and potential returns of a potential investment, as well as identify any red flags that may indicate fraud or mismanagement. Despite its importance, many investors in Silicon Valley have been criticized for neglecting due diligence in their eagerness to invest in the next “unicorn” startup.

Through this case the importance of due diligence is re-iterated. Proper due diligence can help investors make informed decisions and avoid costly mistakes, leading to more sustainable growth and long-term success.

A manufacturing firm that builds components for lithium batteries wants to develop and manufacture entire battery systems autonomously. They are looking at merging with a mid-sized firm that is into manufacturing battery cases and would be interested in conducting strategic diligence to identify firms that align with the vision of the company, and who can enable their manufacturing objectives. They find the best fit for the company and observe that a proper diligence on the human resources of the firm is crucially fundamental, as the operations of the manufacturer are labour intensive.

To understand if the work culture can align with their objectives, the executives from the former firm conduct diligence on the HR policies in place. The results were favourable, as the policies in place were conducive to the merger. They further conduct thorough diligence on the employee demographics for a better understanding of the salaries, tenure, specific skill sets, work hours put in, the average age and the bonuses drawn. There is a thorough assessment of any pending litigations or claims regarding breach of contracts, pensions, and employee’s compensation to ensure everything is in order before proceeding with the merger documentation