

**ADVOCATE'S CHECK LIST  
(TO BE CERTIFIED BY ADVOCATE-ON-RECORD)**

		Indicate Yes/NA
1	SLP(C) has been filed in Form No. 28 with certificate.	NA
2	The Petition is as per the provisions of Order XV Rule 1.	Yes
3	The papers of SLP have been arranged as per Order XXI, Rule (3)(1)(f).	NA
4	Brief list of dates/events has been filed.	Yes
5	Paragraphs and pages of paper books have been numbered consecutively and correctly noted in Index.	Yes
6	Proper and required number of paper books (1 + 1) have been filed.	Yes
7	The contents of the petition, applications and accompanying documents are clear, legible and typed in double space on one side of the paper.	Yes
8	The particulars of the impugned judgment passed by the court(s) below are uniformly written in all the documents.	NA
9	In case of appeal by certificate the appeal is accompanied by judgment and decree appealed from and order granting certificate.	NA
10	If the petition is time barred, application for condonation of delay mentioning the no. of days of delay, with affidavit and court fee has been filed.	NA
11	The Annexures referred to in the petition are true copies of the documents before the court(s) below and are filed in chronological order as per List of Dates.	Yes
12	The annexures referred to in the petition are filed and indexed separately and not marked collectively.	Yes
13	The relevant provisions of the Constitution, statutes, ordinances, rules, regulations, bye laws, orders etc. referred to in the impugned judgment / order has been filed as Appendix to the SLP.	NA
14	In SLP against the order passed in Second Appeal, copies of the orders passed by the Trial Court and First Appellate Court have been filed.	NA
15	The complete listing proforma has been filled in, signed and included in the paper books.	Yes
16	In a petition (PIL) filed under clause (d) of Rule 12(1) Order XXXVIII, the petitioner has disclosed: (a) his full name, complete postal address, e-mail address, phone number, proof regarding personal identification, occupation and annual income, PAN number and National Unique Identity Card number, if any; (b) the facts constituting the cause of action; (c) the nature of injury caused or likely to be caused to the public; (d) the nature and extent of personal interest, if any, of the petitioner(s); (e) details regarding any civil, criminal or revenue litigation, involving the petitioner or any of the petitioners, which has or could have a legal nexus with the issue(s)	Yes   Yes Yes Yes

	involved in the Public Interest Litigation.	Yes
17	If any identical matter is pending/disposed of by the Hon. Supreme Court, the complete particulars of such matters have been given.	NA
18	The statement in terms of the Order XIX Rule 3(1) of Supreme Court Rules 2013 has been given in the Petition of appeal.	NA
19	Whether a Bank Draft of Rs.50,000/- or 50% of the amount, whichever is less, has been deposited by the person intending to appeal, if required to be paid as per the order of the NCDRC, in terms of Section 23 of the Consumer Protection Act, 1986.	NA
20	In case of appeals under Armed Forces Tribunal Act, 2007, the petitioner / appellant has moved before the Armed Forces Tribunal for granting certificate for leave to appeal to the Supreme Court.	NA
21	All the paper-books to be filed after curing the defects shall be in order.	Yes

I hereby declare that I have personally verified the petition and its contents and it is in conformity with the Supreme Court Rules 2013. I certify that the above requirements of this Check List have been complied with. I further certify that all the documents necessary for the purpose of hearing of the matter have been filed.



[Pranab Prakash]

Advocate on-record for the Petitioner,  
20A, Lawyer's Chamber,  
Supreme Court of India, New Delhi.  
Code No: 2660  
9711229563

New Delhi;  
Date: 17.07.2020

IN THE SUPREME COURT OF INDIA  
EXTRA ORDINARY-ORIGINAL JURISDICTION

WRIT PETITION (C) NO. \_\_\_\_\_ OF 2020 (PIL)

PUBLIC INTEREST LITIGATION

IN THE MATTER OF:

SUMAN KUMAR

...PETITIONER

VERSUS

UNION OF INDIA & ORS.

...RESPONDENTS

INDEX OF FILING

SRL.	DESCRIPTION	COPIES	CT. FEE
1	Synopsis & List of Dates	1+3	
2	Listing Proforma	1+3	
3	Writ Petition With Affidavit.	1+3	540/-
4	Annexures P1 to P-17	1+3	
5	Application for exemption from Filing duly Notarized Affidavit.		100/-
6.	Application for Stay		100/-
6	Memo of Appearance on behalf of the petitioner	1	10
Total Rs.			750/-

FILED BY:



**Pranab Prakash**  
**Advocate for the Petitioner**  
**20A, Lawyer's Chamber,**  
**Supreme Court of India,**  
**New Delhi.**  
**9711229563**

Date: 17.07.2020

**New Delhi.**



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2	O/R on limitation	NIL	NIL	
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**LISTING PROFORMA  
IN THE SUPREME COURT OF INDIA**

**Section: X**

The case pertains to (Please tick/check the correct box):	Civil
Central Act: (Title)	The Constitution Of India
Section:	Article 32
Central Rule: (Title)	N/A
Rule No.(s):	N/A
State Act: (Title)	N/A
Section :	N/A
State Rule: (Title)	N/A
Rule No.(s):	N/A
Impugned Interim Order : (Date)	N/A
Impugned Final Order/Decree; (Date)	N/A
High Court: (Name)	N/A
Names of Judges:	N/A
Tribunal/Authority: (Name)	N/A
1. Nature of Matter:	Civil
2. (a) Petitioner/appellant No.1:	Suman Kumar
(b) e-mail ID:	N/A
(c) Mobile Phone number:	N/A
3. (a) Respondent No.1:	Union of India
(b) E-mail ID:	N/A
(c) Mobile phone number:	N/A
4. (a) Main category classification:	08(PIL Matter)
(b) sub classification:	812(Others)
5. Not to be listed before:	N/A
6. (a) Similar Disposed Of matter with Citation, if any, and case details:	No Similar Disposed Of matter
(b) Similar Pending matter with case details:	No Similar Pending matter
7. Criminal Matters:	NO
(a) Whether accused/convict has surrendered:	N/A

(b) FIR No. Date:	N/A
(c) Police Station:	N/A
(d) Sentence Awarded:	N/A
(e) Period of Sentence Undergone including period of detention/custody undergone::	N/A
8. Land Acquisition Matters:	NO
(a) Date of Section 4 notification:	N/A
(b) Date of Section 6 notification:	N/A
(c) Date of Section 17 notification:	N/A
9. Tax Matters: State the tax effect:	N/A
10. Special Category (first petitioner/appellant only):	N/A
Senior Citizen > 65 years	N/A
SC/ST	N/A
Woman/Child	N/A
Disabled	N/A
Legal Aid Case	N/A
In custody	N/A
11. Vehicle Number (in case of Motor Accident Claim Matters):	N/A



**(PRANAB PRAKASH)**

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Ph: +91 - 9711229563

Date: 17.07.2020

New Delhi

**SYNOPSIS**

That this public interest litigation is being preferred on behalf of the petitioner under article 32 of the Constitution of India seeking declaration of the notification of Respondent No. 01 dated 03.01.2020 and subsequent enforcement w.e.f. 01.04.2020 of the notification as being ultra-vires and repugnant to the article 14, 19(1)(g) of the Constitution of India. In this respect it is pertinently submitted that the said notification dated 03.01.2020 is constitutionally impermissible in as much as there is no rational basis for the categorization and classification for the purpose of requirement of regulatory professionals i.e. Company Secretaries, as the necessity of compliance of Companies Act is sacrosanct and absolute and any compromise by way of classification on a ground of paid-up capital cannot be treated as a reasonable classification and exempting the companies from the regulatory compliances on the basis of irrational and unreasonable classification under the garb of paid up capital is discriminatory in as much as it infringes Article 14 of the Constitution of India. It is settled law that the test to be laid down for the validity of any law is that the classification on which it is founded must be based upon intelligible differentia which distinguishes persons or things grouped together from others left out of the group and the second test that differential in question must be reasonable with relation to the object sought to be achieved by rule or statutory provision in question. The impugned notification is not standing to the scrutiny to the both tests as the intention of classification on the basis of paid-up capital is to exempt the group of the companies from the mandatory compliances of laws cannot be said to be reasonable

classification in the light of the fact that the compliance of the law shall have to be uniform irrespective of the size or turnover or any other criteria of the companies. This Hon'ble Court had reiterated time and again that any law enacted must fulfil the basic test as to whether there is rational nexus of the classification with the objective sought to be achieved by regulation 8A of Companies Act. The un-reasonability of this exemption shall further aggravate the corporate lawlessness and shall encourage possible fraudster to commit offenses of syphoning of public money by way of taking advantage of legal lacuna in form of irrational exemption on the basis of paid-up capital. As such the above said classification runs counter to the settle principles of the doctrine of intelligible differentia. Hence, the said notification is arbitrary and discriminatory in as much as the spirit and intendment of notification is premised upon the principle which discriminates the categories of companies and as such it is inconsistent to the basic intention of the Companies Act 2013, which mandates the requirement of Company Secretary for compliance of law. In this respect it is submitted that the Respondent No.3 had not taken fundamental canons of jurisprudence in making distinction and classification relating to the requirement of appointment of the Company Secretary in a particular company for the purpose of due compliance of affairs of companies in terms of provision of the Companies Act 2013. The respondent No. 3 had also overlooked the fundamental fact that the absence of company secretary in the companies are compounding the regulatory mechanism and exposing the company to all kind of financial manipulations and irregularities, which are resulting the large number of the companies to the cusp of their closure without any detection of financial

malpractices. The petitioner is also aggrieved by the poor enforcement of the corporate governance in the companies across the country, which are resulting in serious plummeting of the level of transparency and fairness in the functioning of the companies of our country which are also hitting the very foundation of the financial sinews of our country's economy. Hence, the petitioner is seeking a comprehensive guidelines for evolving of the robust mechanism for regulating the proper operations and effective enforcement of corporate governance in all companies irrespective of their paid up capital in order to minimize the incidences of financial and administrative irregularities. Thus, the pathetic affairs of the administration and enforcement of the companies law are debilitating the entire financial atmosphere and environment of the working of the companies across the country. The corporate lawlessness is impacting on the overall financial fabric of the country. As such, the introduction of said notification dated 03.01.2020 by way of amendment in erstwhile provision under the law is further eroding and undermining the regulatory compliances on account of absence of effective mechanism to rein the illegally rouge companies across the country.

That the petitioner is a public spirited citizen of India and has been involved in various societal and community activities like promoting education among the excluded and marginalized sections of the society by providing the financial and infrastructural support to the remotest part of the country. The petitioner had also founded Unmukt Udaan Education Council which is dedicated towards upliftment of the quality of education and educational infrastructure in the rural and remote areas of the country. The petitioner being a qualified company secretary

## **E**

fellow member of Respondent No.3 is equally concerned with the downfall of the quality of regulatory mechanism in the companies, leading to malfeasance and misfeasance of the most of the companies by motivated and selfish individuals who are under the garb of the fictitious companies, are in fact striking at the financial backbone of the country. With the tightening of the regulatory mechanism through introduction of Companies Act 2013 has brought about the worsening rot to the light as more than six lakhs of companies had been declared defunct on account of various non-compliances and all such companies are lying struck off. There is no account of rupees thousands of crores being syphoned off through formation of fictitious and fake companies in our country. Hence, the petitioner is bringing the issue of regulation and enforcement of the corporate governance in all companies across the country by making Company Secretary as integral and inseparable constituent of every companies irrespective of the paid-up capital for the purpose of compliance and regulation. The petitioner is completely taken off guard at the callous discrimination and distinction in the matter of compliances and regulations rendering the whole issue optional and voluntary at the swift disposal of the officials of the particular companies to utter disregard to the professional competence of the company secretary who are legally qualified by virtue of special enactment of statutory provision of companies law. It is submitted that the petitioner has already approached the respondents by making the representation requesting immediate roll-back of the said notification dated 03.01.2020 as the classification carving out exemption is affront and antithetical to the constitutional scheme of right to equality and equal protection under the Constitution of

India. However, the contention raised in the said representation remained un-responded as yet.

The petitioner is related to many philanthropic acts and one of the primary concern of the petitioner is to ensure the enforcement of corporate governance in the industries with the help of qualified Company Secretaries across the country in order to streamlining the optimum utilization of the corporate competence in the development of the country and economic activities thereof. The petitioner has been visiting faculty of various institutions for last several years in various parts of the country. The petitioner is equally connected in reformation of the antiquated regulatory mechanism through the political process by making representation to the authorities for remedial action against existing anomalies crept in the system. In the past, the petitioner has also been involved in the election processes of Central Council Election of ICSI with pro-bono commitment. The petitioner has unblemished record of relentlessly contributing towards ensuring the rights of the Company Secretaries across the country.

That the Petitioner is a fellow member of Company Secretary of India, and has been working in private sector in a capacity of Executive Vice President (Corporate Affairs) and Company Secretary and his social works are purely self-driven for the cause of the public at large.

That it is submitted that the petitioner is having deep concern at the future prospect of the Companies Secretaries as the amendment of rule 8A is severely curtailing the rights of employment of Company Secretary in companies across the country. The petitioner is having further apprehension that

arbitrary classification by way of enhancement of paid-up capital from Rs 5 crore to Rs 10 crore as a criterion for requirement of Company Secretary for the purpose of compliance is completely arbitrary and discriminatory as this notification dated 03.01.2020 striking at the cardinal purpose of regulation of the companies through the Companies Secretaries. This illegal enhancement of paid-up capital is arbitrary and classification thereof is discriminatory in as much as this amendment implies illegal leverage and unjustified discretion conferred to the companies in matter of regulation and compliances. Such act of discrimination, further weakens the regulatory necessity of a company by exempting from requirement of the Company Secretaries or other compliances for the purpose of the regulation and administration of the companies across the country. It is beyond prudence of common man that the legal compliance is being based upon the selective exemption on the basis of paid-up capital of the companies as the legislative intendments of the law is to ensure the uniform compliances and regulation in all companies with solitary aim to strengthen the financial discipline in the corporate entities. The petitioner is basically avowed proponent of transparency and fairness in functioning of the companies as the companies are the backbone of the financial prosperity of country. Hence, the petitioner is bringing these issues to the notice of this Hon'ble Court for appropriate directions to plug the statutory and legal loopholes in strengthening the corporate governance across the country and the insertion of the conditions by way of classification on the basis of paid-up capital is clearly infringing article 14, 19 (1)(g) of the Constitution of India as the condition imposed is arbitrary and discriminatory and exemption thereof does not serve the



basic purpose of the Companies Law. It is further submitted that such discrimination is defeating the whole purpose of compliance of the companies laws as there must not be classification in terms of compliances of law as whole statutory processes of the Companies Act are being uniformly applied in their creation and their operations throughout their existence. Hence, any exemption from the compliances of companies laws is based upon irrational logic and reasoning.

Hence, this writ petition.

**LIST OF DATES AND EVENTS**

<b>Letter/ Dates/ Year</b>	<b>Particulars/ Remarks</b>
29.08.2013	Companies Act, 2013 was introduced replacing Companies Act, 1956 with the objective of self-governance, transparency and stringent provisions against the defaulter's non-complying the Act. Further containing the provisions of appointment of whole time company secretary in prescribed company U/Sec 203 of the Companies Act, 2013.
31.03.2014	That the MCA has notified Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 stating that every listed company and every other public company having a paid share capital of Rs 10 Crore or more shall have a whole time key

<b>Letter/ Dates/ Year</b>	<b>Particulars/ Remarks</b>
	managerial personnel including whole time company secretary.
09.06.2014	Immediately it was realized that all the private companies has got out of the appointment of the whole time company secretary which was there since 1975. Once it was realized and pointed out by the stake holders immediately the notification dated 09.06.2014 has come inserting Rule 8A in the above Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, stating that “A company other than a company covered under Rule 8 which has a paid up capital of Rs 5 Crore or more shall have a whole time company secretary.
FY 2017-18	Ministry has decided to removal of name of companies from the Registrar of Companies (ROC) and 2,34, 357 companies were closed during the FY 2017-18, totaling to the paid up capital of Rs 14,593.95 Crores. As these companies were falling in the categories of continued non-compliances even non-filing of annual accounts and annual returns.
FY 2018-19	Similarly in the FY 2018-19, 1,38,432 companies were struck off with the total paid up capital of Rs 12,753.19 Crores due to

<b>Letter/ Dates/ Year</b>	<b>Particulars/ Remarks</b>
	continued non-compliance and the Ministry actions thereof.
30.11.2018	There were 33 Lakhs DINs (Director Identification Number) in the registry and around 15.88 Lakhs DIN holders have filed DIR KYC as on 30.11.2018 (48.121% Directors remained non-complied inviting questions on their sanctity, existence, and traceability) in the drive by MCA managed to feed only 11 Lakhs Aadhar Card holders. The non-compliances, non-traceability, fake, fabricated, benamies, dummy companies and directors has become grave concerns being utilized for malicious illegal economic activities and white collar crimes.
31.03.2019	As per the annual report of MCA (Ministry of Corporate Affairs) out of total 18,73,044 companies, 6,70,018 companies were closed [35.77% (more than one third) of the total companies] were closed due to non-compliances/ serious governance issues and only 11,56,374 companies were ACTIVE companies as on 31.03.2019. The Ministry has decided to weed out inactive companies and disqualified directors, protect the public money, overcome the financial irregularities

<b>Letter/ Dates/ Year</b>	<b>Particulars/ Remarks</b>
	and increase the effectiveness of the governance mechanism.
25.04.2019	The ministry has issued notification dated 21.02.2019 for filing of FORM ACTIVE (Active Company Tagging Identities and Verification) on or before 25.04.2019. This Form was prepared by the ministry with exhaustive research getting the whereabouts of the companies registered office, KMPs, all statutory officials, auditors, cost auditors, M.D., company secretaries e.t.c. and it was carrying the stringent conditions for compliances and it was too difficult to continue the non-compliances. Beside several critical information controlling the company it was asking the complete PAN and membership number of the wholetime company secretary of the company. These stringent provisions have created great barrier in continued non-compliances/non-governance.
15.06.2019	The said notification for filing of INC 22A FORM ACTIVE was further extended to 15.06.2019 without any additional fee and thereafter with additional fee of Rs 10,000/- vide notification dated 25.04.2019.

<b>Letter/ Dates/ Year</b>	<b>Particulars/ Remarks</b>
17.06.2019	<p>Ministry has issued letter dated 17.06.2019 to ICSI (Institute of Company Secretaries of India- A statutory body under the Company Secretaries Act, 1980 Monitoring the profession of company secretaries and Corporate Governance), forwarding the different letters dated 04.04.2019, 09.04.2019, undated letters and emails of 16 individual, firms and companies raising their different concerns before the ministry including grievances of few one about not able to attract company secretary due to high salary, affording salary of company secretary, exemption for private companies with less turn over, non-availability if company secretaries. Out of the above said 16 grievances, 6 grievances were pertaining to non-availability of the company secretary in the market. The roving grievances were raised without any base to evade the compliance of the appointment of company secretaries.</p>
08.07.2019	<p>The ICSI has addressed individually all the grievances of the stake holders and have stated that keeping in mind the present parameters for appointment of company secretary which are framed by MCA after a lot of public debate and deliberations are absolutely aligned</p>

<b>Letter/ Dates/ Year</b>	<b>Particulars/ Remarks</b>
	<p>with the present requirements; and therefore, need to be kept intact. Needless to mention that the level of compliance as envisaged by the Government is rising day by day. It was specifically stated “That, out of total active companies, i.e. approximately, 11 Lakh companies, only 39,805 companies are required to appoint a wholetime company secretary. We wish to submit that as on 01<sup>st</sup> July, 2019, ICSI has 58,690 company secretaries on its register out of which only 10,644 are in practice. Accordingly, sufficient numbers of company secretaries are available to serve the corporate India. Further, ICSI through its dedicated placement cell provides placement services to corporate to meet the demand and supply of the company secretaries across the country.</p>
09.07.2019	<p>The ministry has further forwarded letter dated 08.07.2019 which was received by the ICSI on 09.07.2019 containing 18 more grievances sent by different stake holders for the comments of the ICSI. Out of the 18 grievances 12 were not related to appointment of company secretaries and it was pertaining to other concerns. Further, out of 18, 4 have raised the grievances that they are not able to</p>

<b>Letter/ Dates/ Year</b>	<b>Particulars/ Remarks</b>
	find a company secretary or there is a deficit of members in the market. These allegations were completely bogus and it has been raised ulterior motives to continue the non-compliances of the express provisions of law.
25.07.2019	<p>The ICSI has addressed and made its comments individually on all the grievances of the stake holders and reiterated that “We, once again, reiterate that the present parameters for appointment of company secretary which are framed by the MCA after a lot of public debate and deliberations are absolutely aligned with the present requirements; and therefore, need to be kept intact. Needless to mention that the level of compliance as envisaged by the Government is rising day by day.</p> <p>We Shall be pleased to provide any further information or clarification in this regard on hearing from your good self.”</p>
03.01.2020	The MCA has issued the notification dated 03.01.2020 stating that “Every private company which has a paid-up share capital of Rs 10 Crores or more shall have a whole time company secretary. The consequence thereof, all the public and private company having the paid-up capital of less than Rs 10 Crores were

<b>Letter/ Dates/ Year</b>	<b>Particulars/ Remarks</b>
	<p>totally exempted from the appointment of wholetime company secretary. As per the report dated 01.01.2015 containing the data as on 31.12.2014, there were 11,532 companies having the paid up capital of Rs 83,376.46 Crores under the bracket of paid up capital of above Rs 5 Crores to Rs 10 Crores. Hence, a big question mark has come on the employment of approximately more than 11,000 company secretaries, great compromise with the Corporate Governance of these companies and have made the impact on 3.5 Lakhs students on the role of the ICSI, who is seeing their future in the field of Corporate Governance and company secretaries and hence the protest has started across the country.</p>
08.01.2020	<p>As the capital limit has increased in spite of the comments and efforts of the ICSI and the members has started questioning the role and responsibilities of the institute and its council members, it has issued a letter to the members stating that “It was because of your institutes continuous involvements and representations, the enhancements in limits has been limited to Rs 10 Crores only and not beyond.” Further, it was also stated that ICSI is committed provide</p>



<b>Letter/ Dates/ Year</b>	<b>Particulars/ Remarks</b>
	<p>whole hearted support to its members and students and will take all necessary measures as may be required. It has also appealed to the members and students “We earnestly appeal all our members and students not to post any derogatory or defamatory remarks against the regulators, stakeholders or Institute on the social media or by any other means, keeping in view its far reaching impact on the credibility of the profession.” That the institute has threatened the members and the students from making the protests and questioning the failure of the ICSI and its councils and have restricted the freedom of speech and expression. The ICSI and the council has also threatened the members for the disciplinary proceedings.</p>
09.01.2020	<p>The ICSI has again issued the advisory to all the regional council members, chapters and others stating that “It is advised to refrain from making any derogatory or defamatory comment against the MCA or the ICSI. Further you are advised from refrain the facilitating the demonstration by the members and the students. Also the regional councils/ Chapters/ Units are advised not to make any representation in this regard at their end</p>

<b>Letter/ Dates/ Year</b>	<b>Particulars/ Remarks</b>
	directly to any authority /forum, as the institute has already in process of once again taking up the matter with the MCA. So by these advisory again the members were restricted from raising the voice on the said change and protest thereof.
10.01.2020	<p>The ICSI has written the letter to the MCA stating that the said “Amendment has caused a apprehension in the mind of our members and students and there has been lots of resentment in the fraternity across the country.” The ICSI has requested for further amendment in to the rule taking into account the following suggestions:</p> <p><b>SUGGESTION -1:</b></p> <p>Every company which has a paid up share capital of more than Rs 5 Crores and up to Rs 10 Crores and</p> <p>Turnover of hundred Crores rupees or more;</p> <p>or</p> <p>Outstanding loans or borrowings from banks or public financial institutions of one hundred crores rupees or more;</p> <p>Shall have a Whole Time Company Secretary.</p> <p>Explanation- For the purpose of this sub rule,</p>

<b>Letter/ Dates/ Year</b>	<b>Particulars/ Remarks</b>
	<p>the paid up share capital, turnover, or outstanding loans or borrowings as the case may be, existing on the last date of latest audited financial statement may be taken into account.</p> <p>Or ALTERNATE SUGGESTION -2:</p> <p>Every Company which has:</p> <p>A paid up share capital of ten crores rupees or more;</p> <p>Turnover of one hundred crores rupees or more; or</p> <p>Outstanding loans or borrowings from banks or public financial institutions of one hundred crores rupees or more.;</p> <p>Shall have a Whole Time Company Secretary.</p> <p>Explanation:- For the purpose of this sub rule, the paid up share capital, turnover, or outstanding loans or borrowings as the case may be, existing on the last date of latest audited financial statement may be taken into account.</p>
11.01.2020	That the petitioner not being satisfied by the reasoning and the submissions of the institute and its officials have requested for open house sessions or presentation before the Council for

<b>Letter/ Dates/ Year</b>	<b>Particulars/ Remarks</b>
	<p>the strong submission before the Ministry. Copy of the said letter dated 11<sup>th</sup> January, 2020 is enclosed herewith and marked as Annexure- 7. However, the said letter remain un responded from the ICSI.</p>
03.02.2020	<p>However, the ICSI have re approached for the further amendment in the rule vide letter dated 03<sup>rd</sup> February, 2020 (Copy of the same is enclosed and marked herewith as Annexure – 8) with the prayer that to kindly consider further amendment in Rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2013, taking into consideration inserting the following in place of the existing provision:</p> <p>“Every company which has:</p> <ol style="list-style-type: none"> <li>a. A paid up share capital of ten crores rupees or more; or</li> <li>b. Net worth of one hundred crores rupees or more; or</li> <li>c. Outstanding loans or borrowings from banks or public financial institutions of one hundred crores rupees or more; or</li> <li>d. Turnover of two hundred fifty</li> </ol>

<b>Letter/ Dates/ Year</b>	<b>Particulars/ Remarks</b>
	<p style="text-align: center;">crore rupees or more</p> <p>Shall have a Whole Time Company Secretary.</p> <p>Explanation:- For the purpose of this rule, the paid up share capital, net worth, outstanding loans or borrowings or turnover as the case may be existing on the last date of latest audited financial statement may be taken into account.</p> <p>Every company which ceases to be a company covered under Rule 8A for three consecutive financial years shall not be required to appoint company secretary till such time it meets the criteria specified in Rule 8A.</p>
13.07.2020	The Petitioner gave representation to the Respondents.
17.07.2020	Hence this petition.

THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION  
(CIVIL EXTRAORDINARY JURISDICTION)  
PUBLIC INTEREST LITIGATION  
WRIT PETITION (C) NO. \_\_\_\_ OF 2020.

**IN THE MATTER OF:**

SUMAN KUMAR  
S/o Late Sh. Arjun Prasad Singh  
R/o22/11, Second Floor,  
Back Side Near Patel Park,  
West Patel Nagar, New Delhi-110008.  
E-Mail ID :suman22121975@gmail.com  
Mobile : 9958299558 ...Petitioner

VERSUS

1. **Union of India**  
Through its Secretary  
Ministry of Corporate Affairs  
A -Wing, Shashtri Bhawan,  
New Delhi. 110001 ... Respondent No.1
2. **Ministry of Law & Justice**  
Through its Secretary  
4<sup>th</sup> Floor, A Wing, Shashtri Bhawan,  
New Delhi 110001 ... Respondent No.2
3. **Institute of Company Secretaries of India**  
22, ICSI House, Lodhi Road,  
Institutional Area, Lodi Colony,  
New Delhi-110003.  
Through Its Secretary  
E-Mail:csrawards@icsi.edu  
Contact No. 01145341070 ... Respondent No. 3

**PUBLIC INTEREST LITIGATION UNDER ARTICLE 32**  
**OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF**  
**WRIT, ORDER OR DIRECTION IN NATURE OF**  
**MANDAMUS OR ANY OTHER APPROPRIATE WRIT,**

ORDER/DIRECTION TO QUASH THE NOTIFICATION DATED 03.01.2020 (ANNEXURE P-3) OF RESPONDENT NO. 1 AS BEING ULTRA-VIRES OF THE PROVISION OF THE CONSTITUTION OF INDIA AS IT IS VIOLATIVE OF ARTICLE 14, 19 (1) G, 19 (6) AND 21 OF THE CONSTITUTION OF INDIA AND/OR ISSUANCE OF COMPREHENSIVE GUIDELINES IN RESPECT OF ROBUST MECHANISM FOR ENFORCEMENT OF CORPORATE GOVERNANCE LACK OF WHICH LEADS TO LARGE NUMBER OF COMPANIES BEING INVOLVED IN FINANCIAL SHENANIGANS AND MISFEASANCE OF THE PUBLIC MONEY BY THE CORPORATE FRAUDSTER AND CAUSING HUGE LOSS TO THE INTERESTS OF NATION AND/OR DIRECTION TO FORM A HIGH POWERED COMMITTEE TO LOOK INTO THE LAPSES WHICH LED TO THE CLOSURE OF MORE THAN SIX LAKH OF COMPANIES ACROSS THE COUNTRY AND FIX THE CORPORATE ACCOUNTABILITY AND RESPONSIBILITY TO THOSE PERPETRATORS WHO WERE RESPONSIBLE FOR THE FORMATION/OPERATIONS OF THE FICTITIOUS AND SHELL COMPANIES THROUGH WHICH THOUSANDS OF CRORES WERE MANIPULATED TO THE DETRIMENT OF FINANCIAL INFRASTRUCTURE OF THE COUNTRY AND/OR ISSUE A DIRECTION TO THE RESPONDENTS FOR ENSURING CORPORATE COMPLIANCES THROUGH COMPANY SECRETARY IN TERMS OF THE PROVISIONS OF THE COMPANIES ACT AS EXISTING EXEMPTIONS IN TERMS OF

**COMPLIANCES OF THE COMPANIES ACT ARE  
ARBITRARY AND WOULD LEAD TO CORPORATE  
MISMANAGEMENT.**

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA  
& LORDSHIPS COMPANION JUSTICES  
OF HON'BLE SUPREME COURT OF INDIA

HUMBLE PETITION OF ABOVE-  
NAMED PETITIONER

**MOST RESPECTFULLY SHOWETH:**

1. This public interest litigation is being preferred on behalf of the petitioner under article 32 of the Constitution of India seeking declaration of the notification of Respondent No. 01 dated 03.01.2020 and subsequent enforcement w.e.f. 01.04.2020 of the notification as being ultra-vires and repugnant to the article 14, 19(1)(g) of the Constitution of India. In this respect it is pertinently submitted that the said notification dated 03.01.2020 is constitutionally impermissible in as much as there is no rational basis for the categorization and classification for the purpose of requirement of regulatory professionals i.e. Company Secretaries, as the necessity of compliance of Companies Act is sacrosanct and absolute and any compromise by way of classification on a ground of paid-up capital cannot be treated as a reasonable classification and exempting the companies from the regulatory compliances on the basis of irrational and unreasonable classification under the garb of paid up capital is discriminatory in as much as it infringes Article 14 of the Constitution of India. It is settled law that the test to be laid down for the validity of any law is that



the classification on which it is founded must be based upon intelligible differentia which distinguishes persons or things grouped together from others left out of the group and the second test that differential in question must be reasonable with relation to the object sought to be achieved by rule or statutory provision in question. The impugned notification is not standing to the scrutiny to the both tests as the intention of classification on the basis of paid-up capital is to exempt the group of the companies from the mandatory compliances of laws cannot be said to be reasonable classification in the light of the fact that the compliance of the law shall have to be uniform irrespective of the size or turnover or any other criteria of the companies. This Hon'ble Court had reiterated time and again that any law enacted must fulfil the basic test as to whether there is rational nexus of the classification with the objective sought to be achieved by regulation 8A of Companies Act. The un-reasonability of this exemption shall further aggravate the corporate lawlessness and shall encourage possible fraudster to commit offenses of syphoning of public money by way of taking advantage of legal lacuna in form of irrational exemption on the basis of paid-up capital. As such the above said classification runs counter to the settle principles of the doctrine of intelligible differentia. Hence, the said notification is arbitrary and discriminatory in as much as the spirit and intendment of notification is premised upon the principle which discriminates the categories of companies and as such it is inconsistent to the basic intention of the Companies Act 2013, which mandates the requirement of Company Secretary for compliance of law. In this respect it is submitted

that the Respondent No.3 had not taken fundamental canons of jurisprudence in making distinction and classification relating to the requirement of appointment of the Company Secretary in a particular company for the purpose of due compliance of affairs of companies in terms of provision of the Companies Act 2013. The respondent No. 3 had also overlooked the fundamental fact that the absence of company secretary in the companies are compounding the regulatory mechanism and exposing the company to all kind of financial manipulations and irregularities, which are resulting the large number of the companies to the cusp of their closure without any detection of financial malpractices. The petitioner is also aggrieved by the poor enforcement of the corporate governance in the companies across the country, which are resulting in serious plummeting of the level of transparency and fairness in the functioning of the companies of our country which are also hitting the very foundation of the financial sinews of our country's economy. Hence, the petitioner is seeking a comprehensive guideline for evolving of the robust mechanism for regulating the proper operations and effective enforcement of corporate governance in all companies irrespective of their paid up capital in order to minimize the incidences of financial and administrative irregularities. Thus, the pathetic affairs of the administration and enforcement of the companies law are debilitating the entire financial atmosphere and environment of the working of the companies across the country. The corporate lawlessness is impacting on the overall financial fabric of the country. As such, the introduction of said notification dated 03.01.2020 by way of amendment in erstwhile provision under the law is

further eroding and undermining the regulatory compliances on account of absence of effective mechanism to rein the illegally rouge companies across the country.

1.A That the petitioner is a public spirited citizen of India and has been involved in various societal and community activities like promoting education among the excluded and marginalized sections of the society by providing the financial and infrastructural support to the remotest part of the country. The petitioner had also founded Unmukt Udaan Education Council which is dedicated towards upliftment of the quality of education and educational infrastructure in the rural and remote areas of the country. The petitioner being a qualified company secretary fellow member of Respondent No.3 is equally concerned with the downfall of the quality of regulatory mechanism in the companies, leading to malfeasance and misfeasance of the most of the companies by motivated and selfish individuals who are under the garb of the fictitious companies, are in fact striking at the financial backbone of the country. With the tightening of the regulatory mechanism through introduction of Companies Act 2013 has brought about the worsening rot to the light as more than six lakhs of companies had been declared defunct on account of various non-compliances and all such companies are lying struck off. There is no account of rupees thousands of crores being syphoned off through formation of fictitious and fake companies in our country. Hence, the petitioner is bringing the issue of regulation and enforcement of the corporate governance in all companies across the country

by making Company Secretary as integral and inseparable constituent of every companies irrespective of the paid-up capital for the purpose of compliance and regulation. The petitioner is completely taken off guard at the callous discrimination and distinction in the matter of compliances and regulations rendering the whole issue optional and voluntary at the swift disposal of the officials of the particular companies to utter disregard to the professional competence of the company secretary who are legally qualified by virtue of special enactment of statutory provision of companies law. It is submitted that the petitioner has already approached the respondents by making the representation requesting immediate roll-back of the said notification dated 03.01.2020 as the classification carving out exemption is affront and antithetical to the constitutional scheme of right to equality and equal protection under the Constitution of India. However, the contention raised in the said representation remained un-responded as yet.

- 1.B The petitioner is related to many philanthropic acts and one of the primary concern of the petitioner is to ensure the enforcement of corporate governance in the industries with the help of qualified Company Secretaries across the country in order to streamlining the optimum utilization of the corporate competence in the development of the country and economic activities thereof. The petitioner has been visiting faculty of various institutions for last several years in various parts of the country. The petitioner is equally connected in reformation of the antiquated

regulatory mechanism through the political process by making representation to the authorities for remedial action against existing anomalies crept in the system. In the past, the petitioner has also been involved in the election processes of Central Council Election of ICSI with pro-bono commitment. The petitioner has unblemished record of relentlessly contributing towards ensuring the rights of the Company Secretaries across the country.

- 1.C The petitioner has no personal interest, or private/oblique motive in filing the instant application. There is no civil, criminal, revenue or any litigation involving against the petitioner, which has or could have a legal nexus with the issues involved in this petition.
- 1.D That the petitioner is filing this Writ Petition on his own volition and he shall be liable to pay costs as ordered by this Hon'ble Court in the event it is found out that this petition is filed for any personal gain or oblique motive.
- 1.E That the Petitioner is a fellow member of Company Secretary of India, and has been working in private sector in a capacity of Executive Vice President (Corporate Affairs) and Company Secretary and his social works are purely self-driven for the cause of the public at large. The annual income of petitioner is about Rs. 57,00,000/- per annum. The email address of the Petitioner is suman22121975@gmail.com and mobile no. +91-9958299558. The Permanent account number of the petitioner is APVPM2925C and aadhar number is 817436261986. The postal address of the petitioner is 22/11, Second Floor, Backside, Near Patel Park, West

Patel Nagar, New Delhi- 110008.

- 1.F The Petitioner has not filed any other Petition either in this Hon'ble Court or in any other High Court seeking same and similar directions as prayed for in this Petition.
2. That it is submitted that the petitioner is having deep concern at the future prospect of the Companies Secretaries as the amendment of rule 8A is severely curtailing the rights of employment of Company Secretary in companies across the country. The petitioner is having further apprehension that arbitrary classification by way of enhancement of paid-up capital from Rs 5 crore to Rs 10 crore as a criterion for requirement of Company Secretary for the purpose of compliance is completely arbitrary and discriminatory as this notification dated 03.01.2020 striking at the cardinal purpose of regulation of the companies through the Companies Secretaries. This illegal enhancement of paid-up capital is arbitrary and classification thereof is discriminatory in as much as this amendment implies illegal leverage and unjustified discretion conferred to the companies in matter of regulation and compliances. Such act of discrimination, further weakens the regulatory necessity of a company by exempting from requirement of the Company Secretaries or other compliances for the purpose of the regulation and administration of the companies across the country. It is beyond prudence of common man that the legal compliance is being based upon the selective exemption on the basis of paid-up capital of the companies as the legislative intendments of the law is to ensure the uniform compliances and regulation in all companies with solitary aim to strengthen the financial discipline in the

corporate entities. The petitioner is basically avowed proponent of transparency and fairness in functioning of the companies as the companies are the backbone of the financial prosperity of country. Hence, the petitioner is bringing these issues to the notice of this Hon'ble Court for appropriate directions to plug the statutory and legal loopholes in strengthening the corporate governance across the country and the insertion of the conditions by way of classification on the basis of paid-up capital is clearly infringing article 14, 19 (1)(g) of the Constitution of India as the condition imposed is arbitrary and discriminatory and exemption thereof does not serve the basic purpose of the Companies Law. It is further submitted that such discrimination is defeating the whole purpose of compliance of the companies laws as there must not be classification in terms of compliances of law as whole statutory processes of the Companies Act are being uniformly applied in their creation and their operations throughout their existence. Hence, any exemption from the compliances of companies laws is based upon irrational logic and reasoning.

### **BRIEF FACTS OF THE CASE**

3. That it is submitted that the MCA on 09.06.2014 notified the Companies (Appointment and Remuneration of Managerial Personnel) 2014 with Rule 8A wherein the Appointment of Company Secretaries in companies not covered under rule 8A (Appointment and Remuneration of Managerial Personnel) Rules 2014. A company other than a company covered under Rule 8 which has a paid-up capital of five Crore rupees or more, shall have a whole-time company secretary. (Notified on 09.06.2014). It is further

submitted that the ministry has issued notification dated 21.02.2019 having effect from 25.02.2019 for filing of “E-FORM ACTIVE (INC-22A)” (Active Company Tagging Identities and Verification) on or before 25.04.2019. This Form was prepared by the ministry with exhaustive research getting the whereabouts of the companies registered office, KMPs, all statutory officials, auditors, cost auditors, M.D., company secretaries etc. and it was carrying the stringent conditions for compliances which was too difficult to continue the non-compliances. Besides, several critical information in controlling the company, it was asking the complete PAN and membership number of the whole time company secretary of the company. Such, stringent provisions had interdicted the possibilities of omission and commission being employed in registering fake and fictitious companies across the country.

4. That it is submitted that the above said notification dated 21.02.2019 for filing of E-FORM ACTIVE (INC-22A) was further extended to 15.06.2019 without any additional fee and thereafter with additional fee of Rs 10,000/- vide notification dated 25.04.2019. In this respect it is submitted that the above said notification dated 21.02.2019 led to the cartelization of unregulated motivated companies to thwart any efforts to bring about law to regulate the companies with stringent manners. It is further submitted that some of such non-compliant companies registered their grievances to the concerned authorities, protesting any kind of change in existing compliance mechanism as there is awfully lack of number of Company Secretaries with malafide intention



with sole motto of evading the statutory compliances.

5. That it is submitted that the ministry has issued letter dated 17.06.2019 to ICSI (Institute of Company Secretaries of India- A statutory body under the Company Secretaries Act, 1980- Monitoring the profession of company secretaries and Corporate Governance), forwarding the different letters dated 04.04.2019, 09.04.2019, undated letters and emails of 16 individual, firms and companies raising their different concerns before the ministry including grievances of few one about not able to attract company secretary due to high salary, affording salary of company secretary, exemption for private companies with less turn over, non-availability if company secretaries. Out of the above said 16 grievances, 6 grievances were pertaining to non-availability of the company secretary in the market. The roving grievances were raised without any base to evade the compliance of the appointment of company secretaries.
6. That it is submitted that the Respondent No.3 has addressed individually all the grievances of the stake holders and have stated that....

*“In view of the aforesaid, keeping in mind the present parameters for appointment of company secretary which are framed by MCA after a lot of public debate and deliberations are absolutely aligned with the present requirements; and therefore, need to be kept intact. Needless to mention that the level of compliance as envisaged by the Government is rising day by day.” It was specifically stated “That, out of total active companies, i.e.*

*approximately, 11 Lakh companies, only 39,805 companies are required to appoint a whole time company secretary. We wish to submit that as on 01<sup>st</sup> July, 2019, ICSI has 58,690 company secretaries on its register out of which only 10,644 are in practice. Accordingly, sufficient numbers of company secretaries are available to serve the corporate India. Further, ICSI through its dedicated placement cell provides placement services to corporate to meet the demand and supply of the company secretaries across the country”*

A true copy of the reply of The Institute Of Company Secretaries Of India dated 08.07.2019 is annexed herewith and mark as **ANNEXURE P-1 (Pg. 48 to 54)**.

7. That it is submitted that the Respondent No.1 has further forwarded letter dated 08.07.2019 which was received by the Respondent No.3 on 09.07.2019 containing 18 more grievances sent by different stake holders for the comments of the Respondent No.3. Out of the 18 grievances 12 were not related to appointment of company secretaries and it was pertaining to other concerns. Further, out of 18, 4 have raised the grievances that they are not able to find a company secretary or there is a deficit of members in the market. These allegations were completely bogus and it has been raised ulterior motives to continue the non-compliances of the express provisions of law. The extent of cartelization can be reflective of the fact that few grievances from the motivated and entrenched corporates or their representatives prompted the change of existing rules,

thereby raising the paid up capital as criterion to have a desirability of the Company Secretaries in particular companies for the compliance and regulation in the companies.

8. That it is submitted that the Respondent No.3 has further addressed and made its comments individually on all the grievances of the stake holders and reiterated that

*“We, once again, reiterate that the present parameters for appointment of company secretary which are framed by the MCA after a lot of public debate and deliberations are absolutely aligned with the present requirements; and therefore, need to be kept intact. Needless to mention that the level of compliance as envisaged by the Government is rising day by day. We shall be pleased to provide any further information or clarification in this regard on hearing from your good self.”*

A true copy of the reply of The Institute Of Company Secretaries Of India dated 25.07.2019 is annexed herewith and mark as **ANNEXURE P-2(Pg. 55 to 58)**.

9. That it is submitted that the Respondent No.3 is statutory body which regulates the profession of Companies Secretaries across the country. It is submitted that it is an apex body of the Companies Secretaries in respect of education, training and conferring professional degree to the Companies Secretaries. However, it is appalling to see that the highest regulatory body is completely insensitive to the systemic growth of the institution in conformity with the changing times in terms of infrastructural development and

its effective participation in ensuring the corporate governance through its members in co-ordination with Respondent No.1. The Respondent No.3 has failed in its statutory obligations to streamline the institute to the growing needs of their students and associate members. Thus, there is an urgent requirement of overhauling the entire administrative and decision making bodies in order to make it effective and efficient which can withstand the test of present time.

10. That it is submitted that Respondent No.1 had amended the Rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) 2014 in a hasty manner without considering the suggestions and recommendations sent by the statutory body i.e. Respondent No.3, without estimating the outbreak and consequences of the amendment over members Institute of Companies Secretary and Corporate Governance. The material available on record *prima-facie* shows that amendment passed in a hasty manner compromising the necessary checks and balances.
11. That it is submitted that the Respondent No.1 had issued the notification dated 03.01.2020 stating that “Every private company which has a paid up share capital of Rs 10 Crores or more shall have a whole time company secretary. The consequence thereof, all the public and private company having the paid up capital of less than Rs 10 Crores were totally exempted from the appointment of whole time company secretary. As per the report dated 01.01.2015 containing the data as on 31.12.2014, there were 11,532 companies having the paid up capital of Rs 83,376.46

Crores under the bracket of paid up capital of above Rs 5 Crores to Rs 10 Crores. Hence, a big question mark has come on the employment of approximately more than 11,000 company secretaries, great compromise with the Corporate Governance of these companies and have made the impact on 3.5 Lakhs students on the role of the ICSI, who is seeing their future in the field of Corporate Governance and company secretaries and hence the protest has started across the country. A true copy of the notification dated 03.01.2020 is being annexed herewith as **ANNEXURE P-3. (Pg. 59 to 60)**

12. That it is submitted that as the paid-up capital limits has increased in spite of the comments and efforts of the Respondent No.3 and the members has started questioning the role and responsibilities of the institute and its council members, it has issued a letter to the members stating that..

*“It was because of your institutes continuous involvements and representations, the enhancements in limits has been limited to Rs 10 Crores only and not beyond.”*

*Further, it was also stated that ICSI is committed to provide whole hearted support to its registered members and the students and will take all necessary measures as may be required. It has also appealed to the members and students.*

*“We earnestly appeal all our members and students not to post any derogatory or defamatory remarks against the regulators, stakeholders or Institute on the social media or by any other means, keeping in*

*view its far reaching impact on the credibility of the profession.”*

So much so that the institute has threatened its members and the students from making the protests and questioning the failure of the Respondent No.3 and its councils and have restricted the freedom of speech and expression which are guaranteed under Article 19 of the Constitution of India. The Respondent No.3 and its council members have also threatened the registered members for the disciplinary proceedings if they protests/represents against the said notification. A True copy of the letter dated 08.01.2020 issued by The Institute Of Company Secretaries Of India is annexed herewith and marked as **ANNEXURE P-4 (Pg. 61 to 64)**).

13. That it is submitted that the Respondent No.1 has again issued the advisory to all the regional council members, chapters and others constituents stating that ...

*“It is advised to refrain from making any derogatory or defamatory comment against the MCA or the ICSI. Further you are advised from refrain the facilitating the demonstration by the members and the students. Also the regional councils/Chapters/Units are advised not to make any representation in this regard at their end directly to any authority /forum, as the institute has already in process of once again taking up the matter with the MCA. So by these advisory again the members were restricted from raising the voice on the said change and protest thereof.*

A true copy of the letter dated 09.01.2020 issued by The Institute Of Company Secretaries Of India to its members is enclosed and marked herewith as **ANNEXURE P-5 (Pg. 65 to 66)**).

14. That it is submitted that the Respondent No.3 being aggrieved and dissatisfied with the amendment of rule 8A (Appointment and Remuneration of Managerial Personnel) Rules 2014 vide notification dated 03.01.2020, sent a representation with its suggestions vide letter dated 10.01.2020 and concluded by stating that...

**Quote**

*“...the companies have proper and significant business operations which triggers compliance with various laws. In absence of services of Whole Time Company Secretaries, these active companies may be exposed to greater regulatory risk and non-compliance. Further in such companies, public interest is also involved and following good governance practices becomes more significant....”*

*“Amendment has caused a apprehension in the mind of our members and students and there has been lots of resentment in the fraternity across the country.”*

The Respondent No.3 has requested for further amendment in to the rule taking into account the following suggestions:

**SUGGESTION -1:**

*Every company which has a paid up share capital of more than Rs 5 Crores and up to Rs 10 Crores and*

- a. Turnover of hundred Crores rupees or more; or*
- b. Outstanding loans or borrowings from banks or public financial institutions of one hundred crores rupees or more;*

*Shall have a Whole Time Company Secretary.*

*Explanation- For the purpose of this sub rule, the paid up share capital, turnover, or outstanding loans or borrowings as the case may be, existing on the last date of latest audited financial statement may be taken into account.*

**Or ALTERNATE SUGGESTION -2:**

*Every Company which has:*

- a. A paid up share capital of ten crores rupees or more;*
- b. Turnover of one hundred crores rupees or more; or*
- c. Outstanding loans or borrowings from banks or public financial institutions of one hundred crores*

*rupees or more.*

*d. Shall have a Whole Time Company Secretary*

*Explanation:- For the purpose of this sub rule, the paid up share capital, turnover, or outstanding loans or borrowings as the case may be, existing on the last date of latest audited financial statement may be taken into account.*

### **Unquote**

A true copy of the letter dated 10.01.2020 is annexed herewith and marked as **ANNEXUREP-6 (Pg. 67 to 70)**.

15. That it is submitted that the petitioner not being satisfied by the reasoning and the submissions of the institute and its officials have requested for open house sessions or presentation before the Council for the strong submission before the Ministry. However, the said letter remain un-responded from the ICSI. A true Copy of the letter dated 11.01.2020 submitted to ICSI by the petitioner is enclosed and marked herewith as **ANNEXURE P-7 (Pg. 71 to 73)**.
16. That it is submitted that the ICSI have re approached for the further amendment in the rule vide letter dated 03<sup>rd</sup> February, 2020 with the prayer that to kindly consider further amendment in Rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2013, taking into consideration inserting the following in place of the existing provision:

*“Every company which has:*

- a. A paid up share capital of ten crores rupees or more;  
or*
- b. Net worth of one hundred crores rupees or more; or*
- c. Outstanding loans or borrowings from banks or public financial institutions of one hundred crores rupees or more; or*
- d. Turnover of two hundred fifty crore rupees or more  
Shall have a Whole Time Company Secretary .*

*Explanation:- For the purpose of this rule, the paid up share*



*capital, net worth, outstanding loans or borrowings or turnover as the case may be existing on the last date of latest audited financial statement may be taken into account. Every company which ceases to be a company covered under Rule 8A for three consecutive financial years shall not be required to appoint company secretary till such time it meets the criteria specified in rule 8A (Appointment and Remuneration of Managerial Personnel) Rules 2014.*

A true Copy of the letter dated 03.02.2020 is annexed herewith as **ANNEXURE P– 8(Pg. 74 to 76)**.

17. That it is submitted that the impact of impugned notification can also be seen by the act of one of the defaulter company who sent grievance to the MCA. i.e. M/s. Kaytee Corp. Pvt Ltd. who for the first time since 2013 appointed a C.S. on 10.06.2019 and subsequently removed. The MCA current status shows CS resigned on 01.02.2020 as per the Form DIR 12. It is pertinent to say that unlike this entity all other entity having paid up capital between 5 cr. to 10 cr. will also remove already appointed C.S. A true copy of the Form DIR 12 is annexed herewith as **ANNEXURE P-9 (Pg. 77 to 82)**.
18. That it is submitted that as per the annual report of MCA (Ministry of Corporate Affairs) out of total 18,73,044 companies, 6,70,018 companies were closed [35.77% (more than one third) of the total companies] due to non-compliances/ serious governance issues and only 11,56,374 companies were ACTIVE companies as on 31.03.2019. Hence, such situation requires the attention of this Hon'ble Court for taking the cognizance on serious lapses in Corporate Governance. A true copy of the relevant extracts of annual report 2018-2019 of Ministry of Corporate Affairs

is being annexed herewith and marked as **ANNEXURE P-10(Pg. 83 to 84)**.

19. That it is further submitted that there were 33 Lakhs DINs (Director Identification Number) in the registry and around 15.88 Lakhs DIN holders have filed DIR KYC as on 30.11.2018 (48.121% Directors remained non complied inviting questions on their sanctity, existence, and traceability). The non-availability/ non-compliance by the Directors invites the cognizance of this Hon'ble Court on Corporate Governance of Corporate India. A true copy of the relevant extracts of annual report 2018-2019 of Ministry of Corporate Affairs is being annexed herewith and marked as **ANNEXURE P- 11(Pg. 85 to 86)**.
20. That is also submitted that the attention of this Hon'ble Court is drawn towards this fact that approximately one third of the Corporate India remain in non-complied zone for number of years resulted the Government has decided to close approximately one third of the total registered companies as discussed above. The details of non-filing of Annual Accounts and Annual Returns of the companies during various financial years are being set out as under for ready reference of this Hon'ble Court indicating the pathetic plight of the compliances of law and flouting the regulations.

<b>Sl. No.</b>	<b>Financial Year</b>	<b>No. of Active Companies</b>	<b>Non filing of Annual Accounts (% out of</b>	<b>Non filing of Annual Returns (% out of Total</b>

			<b>Total Active Companies)</b>	<b>Active Companies)</b>
1.	2013-14	9,52,433	30.62%	30.38%
2.	2014-15	10,22,011	24.55%	25.10%
3.	2015-16	10,88,780	37.91%	40.05%
4.	2016-17	11,69,303	27.22%	30.04%
5.	2017-18	11,67,858	18.73%	19.69%
6.	2018-19	11,56,374	1.36%	4.39%

21. That it is submitted that the listed companies which have collected the funds from the Initial Public Offering (IPO) and further public offer have suddenly vanished as a result of which there is huge financial jolt to the economic growth of our country and proved to be a great loss to the common investors. It is no longer secret that those listed companies have vanished after public issue during the year 1992-2005 and out of which 238 listed companies identified as Vanished Companies only 161 such companies had been traced out and rest of the 77 are still untraced. It is further submitted that the extent of lawlessness is further evidenced by the fact that as on 31.03.2019, there were approximately 177 vanished companies which were listed on Bombay Stock Exchange (BSE) and same is not traceable. A true Copy of the list of vanishing companies as on 31.03.2019 is being annexed herewith and marked as **ANNEXURE P-12(Pg. 87 to 90)**.
22. That it is submitted that as per one case study on white collar crime available on public domain (International Journal of Engineering Development and Research) “One of the major havoc that is created in present times is because of

mysterious disappearances of corporations. In this respect it is submitted that out of approximately 5651 companies listed in the Bombay Stock Exchange, 2750 had been vanished. It is pertinent to mention that one out of two companies that comes to the stock exchange to raise Crores of rupees from the innocent investors' looting their money and runs away with further compliances. It is also submitted that about 11 million investors had invested Rs 10,000 Crores in those 2750 companies and unfortunate predicaments that those investors feel cheated and looted by the said vanished companies and the respondents is mute spectators to the circumstances being confronted by those innocent investors.

23. That it is submitted that as per the report published in news clippings Live Mint dated 12.06.2019 "Bank frauds worth Rs. 2.05 Trillion happened in last 11 years, reveals RBI data". Over 50 thousand frauds hit banks in India FY09-FY19, RBI said in response to an RTI query by them. It reflects serious lapses in Corporate Governance and requires the immediate indulgence of this Hon'ble Court on Corporate Governance. A true copy of the news clippings dated 12.06.2019 published in Live Mint is being annexed herewith and marked as **ANNEXURE P-13(Pg. 91 to 94)**
24. That it is submitted that as per one report, ET BUREAU dated 30.08.2019 available in the public domain "Indian Banking System detected Rs 71,500 Crores worth of frauds in FY2018-19 which to put in scale each slightly more than the Rs 71,000 Crores recapitalization package planned by the Government to revive the health of its public sector

bank. It is further submitted that the report of the Press Trust of India dated 04.06.2019 “Reserve Bank of India in an RTI reply has disclosed approximately more than 6800 cases of bank frauds involving an unprecedented Rs71,500 Crores were reported in FY 2018-19 as against a total of 5,916 such cases in FY2017-18 involving Rs 41,167.03 Crores. A true copy of the news published in The Economics Times dated 30.08.2019 is being annexed herewith as **ANNEXURE P-14(Pg. 95 to 96)**.

25. That it submitted that as per the data base of the Annual Report of the Ministry of Corporate Affairs in last five years from FY 2013 TO FY 2017-18 more than one third companies of India have failed in filing the Annual Returns and even Annual Accounts thereof. However, the total prosecution for non-filing of Annual Returns under the Companies Act, 2013 and The Companies Act, 1956 comes to only 403 which is apparently reflecting that approximately 2,29,984 companies have not filed the Annual Return against year 2017-18. In this respect it is further submitted that the percentage of prosecution comes to 0.17% of total prosecution against the financial year 2018-2019. It is further submitted that similarly the total prosecution filed from April, 2018 to March, 2019 are against 632 companies only for non-filing of annual accounts (Balance Sheet) which comes only 0.28% of total non-complied companies. However, approximately 2,18,738 companies have not filed their Annual Accounts FY 2017-18. A true copy of the relevant extracts of Annual Reports of 2018-2019 of Ministry of Corporate Affairs is being

annexed herewith and marked as **ANNEXURE P-15(Pg. 97 to 98)**.

26. That it is submitted that that as per the Annual Report of the Respondent No.1, there are total pending prosecutions across the Country is 33,965 against 21,373 companies. However, around 6,21,966 companies have been declared defunct/ struck off by the ROC and actions had been taken only against around 21,373 companies in the past which comes around 3.43% only. A true copy of the relevant extracts of Annual Reports of 2018-2019 of Ministry of Corporate Affairs is being annexed here with as **ANNEXURE P-16(Pg. 99 to 101)**.
27. That it is submitted that the petitioner has already approached the respondents by making the representation requesting immediate roll-back of the said notification dated 03.01.2020 as the classification carving out exemption is affront and antithetical to the constitutional scheme of right to equality and equal protection under the Constitution of India. However, the contention raised in the said representation remained un-responded as yet. A true copy of the representation dated 13.07.2020 is being annexed herewith as **ANNEXURE P-17. (Pg. 102 to 175)**.
28. That it is submitted that there were more than 18,73,044 companies in India and after closure of non-complied companies around 11,56,374 companies are found to be active companies as on 31.03.2019. It is further submitted that it has been noticed that there is no concept of random checks on the Corporate Governance or suo-moto inspections, visits of different corporate even sample check.

29. That it is submitted that Respondents have taken the initiative to weed out inactive companies and disqualified directors, protect the public money, overcome the financial irregularities and increase the effectiveness of the governance mechanism. India is perhaps the only country where a form like INC-22A (ACTIVE) is introduced. The MCA has notified form no. INC-22A- ACTIVE (Active Company Tagging Identities and Verification) and have asked for all substantial details ensuring whereabouts of the company, its management, Company Secretaries, Auditors etc. and have asked for email id with OTP confirmation, Photographs of registered office with directors/ KMP with longitude and latitude, complete where about of all directors, complete details of statutory auditors, complete details of cost auditors, complete details of Managing Directors or CEO or Managers or Whole Time Directors, Company Secretary if applicable, CFO, details of filing of balance sheets, Annual return for the financial year 2017-18 duly signed by stated officials and along with their certifications. It was also stated that, if the company does not intimate the said particulars, the company shall be marked as “ACTIVE- non-compliant” on or after 26<sup>th</sup> April, 2019 and shall be liable for action under Sub-section (9) of section 12 of the Act: Provided also that no request for recording the following event based information or changes shall be accepted by the Registrar from such companies marked as “ACTIVE non- compliant”, unless “e-Form ACTIVE” is filed.
30. That it is submitted that as the above said initiatives of the

respondents have left no place for the violators and non-compliances they have created a cartel and started raising the concern for non-availability of the company secretaries or the costing or the various false and frivolous issues and have created a cartel to evade from the express provision of law for appoint of company secretaries and also to evade from providing the other substantial details to be provided to the MCA in the name of non-availability of the company secretaries making it as *amohra* for continued non compliances, not only this some of the professionals have raised this issue wrongly on the basis of professional biasness.

31. That it is further submitted that there were 35,158 Company Secretaries in India as on 31<sup>st</sup> March, 2014 and there were approx. 27,785 companies above the paid-up capital of Rs 5 Crores or more. There was no issue of less number of company secretaries in the market in the past rather the members have faced difficulties in getting the job due to the evading attitudes of this important provisions of hiring of company secretaries in the past. In this respect it is submitted that from the above said report it is clear that there was no issue pertaining to less number of company secretaries in the market.
32. That it is submitted that the Companies Act, 2013 has replaced the Companies Act, 1956 with the core objective of self-governance, great transparency and being more stringent towards the violation of the provisions of the enactment. Since, 2009 all the companies having the paid up capital of Rs 5 Crores or more, it was mandatory for



them to hire the company secretary for ensuring the compliances of the Companies Act and other enactments and watch the interest of the investors, company and other stake holders. As per the report dated 01.01.2015, data dated 31.12.2014, there were 11,532 companies holding the total paid up capital of Rs 83,376.46 Crores. The above said amendment is not only serious compromise with the Corporate Governance of those companies rather also impacts the employment and livelihood of more than 11 thousand company secretaries across the country and more than 4 Lakhs students across the country preparing for being the members of the ICSI.

33. That it is submitted that said arbitrary amendment is in the teeth of Article 14, 19(1)g and 21 of the Constitution of India. The amendment is arbitrary being passed without ascertaining any need, cause of action and without application of mind, ignoring the representations sent by the Statutory body i.e. Institute of Companies Secretary (“I.C.S.I.”). It is pertinent to mention that the comparative study of the rule 8A (Appointment and Remuneration of Managerial Personnel) Rules 2014 and subsequent rule of year 2020 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 are set out as under : -

OLD RULE w.e.f. 31.03.2014	NEW RULE w.e.f. 01.04.2020
A company other than a company covered under	Every private company which has a paid-up share

<p>Rule 8 which has a paid-up capital of <u>five Crore</u> rupees or more, shall have a whole-time company secretary. (notified on 09.06.2014) [Since, 2009 as per the provisions of Companies Act, 1956 all the companies having the paid up capital of Rs 5 Crores or more were mandatory required to hire Whole Time Company Secretary.]</p>	<p>capital of <u>ten Crore</u> rupees or more shall have a whole – time company Secretary. [As per this amendment effective from which was notified on 03.01.2020 effective from 01.04.2020 , there is no requirement of having the Company Secretary for the companies having the paid up capital less than Rs 10 Crores. As on 31.03.2014, approx. 11, 532 companies are falling within the bracket of Rs 5 Cores to Rs 10 Crores.</p>
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34. That it is further submitted that the petitioner is constrain to raises an objection for enhancement of financial limit for engaging Company Secretary from Rs 5 crore to Rs 10 crore being the serious compromise with the Corporate Governance. It is further submitted that the said appointment of the company secretaries was fully effective from 09<sup>th</sup> June, 2014 vide Rule 8 and 8A, of Companies (Appointment and Remuneration of Managerial Personnel) Rules. 2014 and Section 203 of Companies Act, 2013 was effective since beginning and Rule 8A was also notified with effect from 09<sup>th</sup> June, 2014. But none of the corporate across the country has raised any issues as such and the

habitual violator has opted for non complying the same and have never raised this issue at any time in the past and have non-complied the expressed provisions from the year 2015-2019.

35. That it is submitted that the Companies Amendment Act, 1974, Sec. 383 A was inserted in the Companies Act, 1956 stating that “383A. *CERTAIN COMPANIES TO HAVE SECRETARIES:*

*(1) Every company [having such paid-up share capital as may be prescribed] shall have a whole time secretary, and where the Board of directors of any such company comprises only two directors, neither of them shall be the secretary of the company. [Provided that every company not required to employ a whole time secretary under subsection (1) and having a paid-up share capital of ten Lakhs rupees or more shall file with the Registrar a certificate from a secretary in whole time practice in such form and within such time and subject to such conditions as may be prescribed, as to whether the company has complied with all provisions of this Act and a copy of such certificate shall be attached with Board's report referred to in section 217.]*

It can be evident that at that time the profession was nascent stage and the members were less hence the criteria for hiring of company secretaries was considered as Rs 25 Lakhs paid up capital which has gone to Rs 5 Crores by several changes in due course. The Ministry of Corporate Affairs (MCA) has introduced Companies Secretaries Act, 1980, “An act to make provisions for the regulation and the development of the profession of Company Secretaries.”

and the Institute of Companies Secretaries of India was incorporated as statutory body under the supervision and control of Ministry of Corporate Affairs (MCA).

The paid up capital of the company represents the ownership of the company and the ratio of its contribution by different equity share holders. Even a company with the minimum paid up capital has great opportunities for extending the business with the help of the debt, loans, financial assistance of the different institutions, corporate and can have big turn over in the market. It should also be noted that as per the current practice very small amount of investments are being considered in the paid up capital and the balance funds being treated as share premium as a part of reserve and surplus. For understanding recently Reliance Industries issued share at Rs. 1250/- (approx..) out of which only 10 was invested in paid-up capital and rest went to reserves and surplus, in this transaction company's paid capital increased only by Rs. 10 whereas money invested by the shareholder is Rs. 1250/- (per share), hence any figure which denotes paid-up capital not necessarily denotes the actual amount invested by a shareholder. Further, in the past TCS has issued shares of face value of Rs 1 (paid up capital value Rs 1) in Rs. 700, so here by the investment of Rs 700 the paid up capital will increased by only Rs 1 and Rs 699 will be share premium and will be the part of reserve and surplus.

36. That it is submitted that the below mentioned data of the companies are used for illustrative purpose to show entities having huge turnover with *no compulsory company*

*secretary* as paid up capital is below the limit to have compulsory C.S.

S. No	Name of the Company	Paid up capital (INR) approx.	Turnover (INR) approx.
1.	Apple India Pvt Ltd	3,50,020	13048 Cr.
2.	Google India Pvt Ltd	1,07,38,790	9338 Cr.
3.	HP (India) Pvt. Ltd	2,80,31,840	500 Cr
4.	Microsoft Corp. (India) Pvt Ltd	2,41,14,760	7301 Cr.
5.	Bikanervala Foods Pvt ltd	85,00,000	4000 Cr.
6.	Rolls Royce India Pvt Ltd	1,03,72,70	100-500 Cr.
7.	HimalayaDrug Co. Pvt. Ltd.	1,00,200	1800 Cr.

Therefore, in view of the data reproduced, it can be said that Paid-up capital of the company is one of the criteria to represent the size of the company other than turnover, net worth, loans and borrowings. Company even with less paid-up capital can have large economic activity and turnover. It can be said that the value of Rs. 5 crore paid-up capital is enough for carrying various large activities with or without the help of the various banks, NBFCs, financial institutions and other financial support and hence the requirement of the company secretary for the capital of Rs. 5 Crore or more is fully justified.

Therefore, even a company with a small paid up capital can

have huge turn over and it deals with various banks and financial institutions. It has also been noticed in the past that small corporate entities are more utilized for ulterior motives being either fake, fabricated and have been created for malicious intent or objective and therefore more governance is needed in these companies to avoid its mis-utilization. It have been noticed that various companies remains the part of the white collar crimes or have been utilized for malicious, illegal economic activities. The striking of the company or declaring a defunct without any action gives very bad message to the public at large.

37. That it is submitted that the Respondent No.1 in year 2014 had notified Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 which got notified on 31.03.2014 and vide Rule 8, where every listed company and every other public company having a paid up share capital of 10 crore or more shall have a whole time key managerial personnel. The said rule being arbitrary resulted in an amendment pursuant to which Government had further notified an amended notification dated 09.06.2014 by inserting rule 8A (Appointment and Remuneration of Managerial Personnel) Rules 2014 which states the limit for appointment of Company Secretaries i.e. 5 crore for engagement of whole time Companies Secretaries. However, after the commencement of the Companies Act 2013, the provision for the appointment of the whole-time company secretaries was in effect vide Rule 8 and 8A, of Companies (Appointment and Remuneration Of Managerial Personnel) Rules. 2014 and Section 203 of the

Companies Act 2013. It is important to mention here that none of the corporate across the country had raised any issue till the commencement of INC- 22A in the year 2019, pursuant to which 17 defaulter entities showed their inability to engage C.S. and to cover-up their default sent grievance with concocted stories before the MCA.

38. That it is submitted that even Respondent No.3 vide its letter dated 08.07.2019 had addressed M.C.A. in response to the grievance forwarded by the stakeholders and have stated that the present parameters for appointment of Company Secretary framed by MCA are absolutely aligned with the present requirements; and therefore, need to be kept intact. It is important to mention here that before amending the limit under Rule 8 A, Ministry of Corporate Affairs had taken discussed and took opinion over the issue from I.C.S.I. But none was appreciated. It is pertinent to mention that Respondent No.3 had suggested to Respondent No.1 for adding the criteria of turnover and net worth in addition to the paid-up capital. However, the same could not be done due to the reason not known. It is pertinent to mention here that the number of active companies with the paid-up capital is as under (Report dated 01.01.2015, data dated 31.12.2014.) The summarized tabular form of the relevant data are set out as under for comparing the present status of the health of the companies.

<b>Paid up capital Range</b>	<b>Distribution of Active Companies with respect to</b>	<b>Paid-up Capital</b>
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	<b>Paid-up Capital</b>	
	<b>Total No. of Companies</b>	
Above 1 crore to 2 crore	32,207	47,709.94
2 cr to 5 cr	29,390	96,959.99
5 cr to 10 cr	11,532	83,376.46
10 cr to 25 cr	8,635	136,177.40
25 cr to 100cr	5,279	253,894.63
100 cr to 500 cr	1,752	370,176.43
500 cr to 1000 cr	288	202,021.28
Above 1000 crore	299	967,384.54

As per the said report the number of companies in the bracket of paid up capital above Rs. 5 crores to Rs 10 crores were 11,532. It is important to mention here that figures in above table pertains till 31.12.2014 and as of now numbers would have increased hence impugned notification not only compromising with Corporate Governance for minimum 11,532 companies but will also effect approx. 12000 C.S. engaged in those companies.

39. That it is submitted that the Respondent No.3 being dissatisfied with the said amendment and rejection of its repeated proposals sent a letter dated 10.01.2020 for further amendment in the rule and gave suggestions.

#### **QUESTION OF LAW**

40. That it is submitted that in the circumstances mentioned herein above and below, the pertinent question of law emerges for



consideration and determination which are set out as under:-

- (a) **Whether**, the notification dated 03.01.2020 is ultra-vires the Article 14 of the Constitution of India as the classification for employability of the Companies Secretaries on the basis of enhanced paid-up capital for regulation and administration of the Companies is arbitrary and discriminatory in as much as carving out an exemption below the specified paid-up capital of the companies invalidate the intelligible differentia?
- (b) **Whether**, the existing exemptions in terms of Section-92 of the companies Act 2013 and Companies (Management and administration) Rules 2014 in compliances by the company under the companies act, should be made mandatory through company secretary irrespective of the paid-up capital of the companies as such exemptions strikes at the root of article 14 of the Constitution of India?
- (c) **Whether**, there is an urgent need for comprehensive guidelines for evolving robust mechanism in order to ensure proper and effective regulatory and supervisory apparatus in the country as lack of effective mechanism is exposing the companies to the financial irregularities and administrative manipulations resulting into financial indiscipline across the country and the incidences of closure of more than six lakhs companies are the result of lack of mechanism of corporate governance?
- (d) **Whether**, the high powered committee is required to look into the culpability of thousands of directors of defunct companies who had eaten into the financial vitality of the country are still roaming free without any kind of legal

actions as the respondent No.1 had not taken any effective action against those directors. The Respondent No.1 is responsible for taking selective legal actions against the defunct companies?

### **GROUND**

41. That it is submitted that being dissatisfied and aggrieved by the arbitrary notification dated 03.01.2020 of respondent, having no rationality of purpose behind the amendment and thereby enhancing the limit of paid-up capital from Rs 5 crore to Rs 10 crore for the purpose of compliances and regulations through the Company Secretary, defies the preposition of intelligible differentia between enactment and its acquisition of cardinal object of regulation and administration of companies across the country. As such, act of the respondents is ultra-vires of the article 14 of the Constitution of India and is liable to be quashed on this ground alone. In addition to above the petitioner being aggrieved by the prevalence of malfeasance and misfeasance on account of unregulated environment and prevalent lacunae in enforcement of corporate governance in the corporate entities across the country leading to financial manipulation with unfailing regularity. Hence, the petitioner is approaching this Hon'ble Court for consideration of the above said issues and appropriate direction thereof on the inter-alia various grounds including the following grounds as mentioned herein below :-

- (a) **Because**, the notification dated 03.01.2020 of respondent is arbitrary and discriminatory in as much as it infringes the settled proposition of law of intelligible differentia and that it is ultra-vires the article 14 of the Constitution of India as

such classification is not permissible having no nexus to the object to be achieved thereby infringing the right to equality as the said exemption from the compliance is unreasonable and arbitrary. As such the said notification is liable to be quashed in the interest of justice.

(b) **Because**, the said notification dated 03.01.2020 is completely opposed to the rationality test under the Constitution of India. Hence the notification is completely impermissible as it is striking at very root of Article 14 of the Constitution of India. In this respect, it is pertinently submitted that the said notification is devoid of rational nexus to the object to be achieved by the legislature in terms of compliance and regulation of the companies across the country. The classification sought to be made by introduction of rule 8 A is intended to discriminate amongst the companies on the basis of paid-up capital and there is no requirement of certification by Company Secretaries in terms of section-92 of Companies Act 2013. This notification clearly exempts the companies below the specified limit of paid-up capital from the requirement of regulations and supervision of the companies through Companies Secretaries. Therefore, the said notification is suffering from two infirmities which is capable of hitting the very foundation of structural *modus operandi* of the functioning of the companies under the rule of law. As such, the said notification is constitutionally impermissible and is liable to be quashed.

(c) **Because**, the said notification dated 03.10.2020 also suffers from vice of discrimination in as much as the company has

been given unbridled and unfettered power to manage the company to the utter disregard of the requirement of regulatory professionals like Company Secretaries in a proper professional and legal manner. This leverage of discretion implies the complete freedom of manipulation on the part of noncomplying companies to take advantage of the need of regulation under the supervision of Company Secretaries. As such, this discrimination is not based upon rational thinking towards the objective of the legislation and the said notification dated 03.01.2020 is liable to be quashed.

- (d) **Because**, there is complete lack of enforcement of the corporate governance in the companies which are majorly impacting and affecting at all levels of their functioning and the role of the Company Secretary assumes utmost importance in ensuring the compliance of regulations and adherence of corporate laws and other enactments in the entire operational levels of the companies. That is to say that the Company Secretary is the brain of a company which propels the company with due compliance of law and other enactments to be legally compliant so that the companies may be functioning in accordance with the conformity of the settled law. Hence, this notification is glaringly overlooking all the aspects of corporate governance in operation of the companies. As such, the said notification dated 03.01.2020 is liable to be quashed as it being repugnant to its constitutionality test on the basis of intelligible differentia. Hence, the said notification is liable to be quashed.
- (e) **Because**, the Respondents have not taken any effective

measures in bringing the guilty directors of the defunct companies which were forcefully closed on account of non-compliance of the companies laws. The number of companies which had been closed with enactment of new Companies Law, 2013, are approximately more than six lakh companies. However, the respondent appears to have forgotten the requirement of bringing the guilty directors of those defunct companies to face justice. Further, there is no investigation carried out against those directors for the purpose of looking into all aspects of dis-functionality and the financial damages being caused by those defaulted directors. Thus, there is an urgent requirement of formation of high powered committee to look into all aspects and dimensions of irregularities and the number of defaulted persons involved in syphoning of the money under the fraudulent and deceptive manner.

- (f) **Because**, the regulatory environment of the corporate entities of our country are exposed to serious vulnerability of financial manipulations and thousands of litigations in various courts of the country serves an illustration to the extent of manipulation of the public money which is taken on the name of the companies but ultimately is lost in the labyrinth of procedural compliances without fixing the responsibility and accountability of those defaulted companies.
- (g) **Because**, the said notification dated 03.01.2020 has been published by amending the erstwhile provision of rule 8A (Appointment and Remuneration of Managerial Personnel) Rules 2014 of is without any basis of

quantifiable data or study to show whether amendment will be beneficial for the purpose of good corporate governance. The whimsical way in which the said notification dated 03.01.2020 was brought only on the basis of grievances of few stakeholders is completely devoid of any justification. Hence, the said arbitrary notification is liable to be quashed.

42. That it is submitted that the source of information to the Petitioner are the Annual Reports of Ministry of Corporate Affairs, 2013-14 onwards and website of MCA, Annual Reports of Institute of Company Secretaries of India, The copy of representation/ letters made by Institute of Company Secretaries of India and ICSI available on the website of ICSI and public domain. It is further submitted that the other information available in the public domain and downloaded from the relevant websites and with the help of Google Search. The petitioner declares that there is no other remedy then to file the present PIL before this Hon'ble Court. The petitioner has protested and raised the concern pertaining to above issues before the Institute of Company Secretaries of India and have also offered for making the presentation before them which was not responded by the ICSI. The entire representation on the above issue by the Respondent No.3 before the Ministry of Corporate Affairs were not considered and the rule 8A (Appointment and Remuneration of Managerial Personnel) Rules 2014 was amended without considering the said representation of the Respondent No.3. Even after the said notification dated 03.01.2020, several letters were issued by Respondent No.3 to Respondent No.1. Therefore, as a common citizen of this

country no relief left rather than approaching this Hon'ble Court for issuance of appropriate direction to the respondents in the interest of public at large.

43. That it is submitted that the immediate attention of this Hon'ble Court towards serious compromise with Corporate Governance, due diligence and compliances impacting the economic growth of our country in the interest of all the stake holders connected with corporate entities and also towards all the banks, financial institutions and common people of our country who deals with the corporate entities.
44. That it is submitted that the issue raised herein above by the petitioner is neither dealt with nor decided by any Court of law at the instance of the petitioner or to the best of his knowledge.

#### **GROUND FOR INTERIM RELIEF**

45. That it is submitted that the immediate stay is sought in the facts and circumstances mentioned above including that facts that the arbitrary amendment in rule 8A (Appointment and Remuneration of Managerial Personnel) Rules 2014 vide notification dated 03.01.2020 and its subsequent enforcement wef 01.04.2020 as the said impugned notification dated 03.01.2020 is opposed to the intendment of the companies law as regulation of the companies are corner stone to protect the companies from mismanagement and non-compliance of statutory provisions. In absence of stay on the said notification dated 03.01.2020, there are chances of wide spread financial manipulation at every levels of operations of the companies. Further, it will have serious impact and compromise with the Corporate

Governance, which is detrimental to the economic growth of the Nation.

46. That it is submitted that in view of the above facts and circumstances the said notification dated 03.01.2020 is bad in law with constitutional vices. There is manifest arbitrariness in the said Notification.

**PRAYER**

In view of the above and in the interests of justice, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- (a) To quash the notification dated 03.01.2020 of Respondent No. 1 as being ultra-vires of the provision of the Constitution of India as it is violative of article 14, 19 (1) g, 19 (6) and 21 of the Constitution of India.

And/or

- (b) Direct the respondents for issuance of comprehensive guidelines in respect of robust mechanism for enforcement of corporate governance lack of which leads to large number of companies being involved in financial shenanigans and misfeasance of the public money by the corporate fraudster and causing huge loss to the interests of nation.

And/or

- (c) Direct the respondents to form a high powered committee to look into the lapses which led to the closure of more than six lakh of companies across the country and fix the corporate accountability and responsibility to those perpetrators who were responsible for the formation/operations of the fictitious and shell companies through which thousands of crores were manipulated to the detriment of financial infrastructure of the country.



and/or

- (d) Issue a direction to the respondents for ensuring corporate compliances through company secretary in terms of the provisions of the companies act as existing exemptions in terms of compliances of the companies act are arbitrary and would lead to corporate mismanagement.

and/or

- (e) Pass such further order(s) as may be deemed fit and proper under the facts and in the circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE PETITIONERS AS  
IN DUTY BOUND SHALL EVER PRAY.

FILED BY:



(PRANAB PRAKASH)  
Advocate For Petitioner

DRAWN BY: Shashank Deo Sudhi, Advocate  
Drawn on: 17.07.2020  
Filed On: 17.07.2020

**THE SUPREME COURT OF INDIA**  
**CIVIL ORIGINAL JURISDICTION**  
**(CIVIL EXTRAORDINARY JURISDICTION)**

**WP (PIL) NO. \_\_\_\_ OF 2020.**

**IN THE MATTER OF:**

SUMAN KUMAR

...PETITIONER

VERSUS

UNION OF INDIA & ORS.

...RESPONDENTS

**AFFIDAVIT**

I, Suman Kumar , aged about 45 years, S/o Late Sh. Arjun Prasad Singh, R/o 22/11, Second Floor, Near Patel Park, West Patel Nagar, New Delhi-110008, do hereby solemnly affirm and declare as under:-

1. That I am the petitioner and as such I am well conversant with the facts and circumstances of the present matter from my personal knowledge and belief and hence am competent to swear this affidavit.
2. That accompanying Writ Petition under Article 32 of Constitution of India has been drafted by my counsel on my instruction and the facts stated therein are true and correct to the best of my knowledge and belief.
3. That the contents of accompanying Public Interest Litigation (Para 01 to Para 46 ) (Page 01 to 47 ) and synopsis, list of dates & events (page B to T ) and prayer of the accompanied public interest litigation and accompanying interlocutory applications have been read by me and found true and correct to the best of my knowledge and belief. The contents of the

same are not being reproduced herein for the sake of brevity and may be read as part and parcel of this affidavit.

4. That the content of above affidavit is true and correct to my personal knowledge and belief and nothing material has been concealed there from.



DEPONENT

**VERIFICATION**

Verified at New Delhi on this day of 17 July 2020 that the contents of the above affidavit are true and correct to my knowledge and belief and nothing material has been concealed there from.



DEPONENT

**THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION  
(CIVIL EXTRAORDINARY JURISDICTION)  
WP (PIL) NO. \_\_\_\_ OF 2020.**

**IN THE MATTER OF:**

SUMAN KUMAR

...PETITIONER

VERSUS

UNION OF INDIA & ORS.

...RESPONDENTS

**AFFIDAVIT**

I, Suman Kumar, aged about 45 years, S/o Late Sh. Arjun Prasad Singh, R/o 22/11, Second Floor, Near Patel Park, West Patel Nagar, New Delhi-110008, do hereby solemnly affirm and declare as under:-

1. That I am the petitioner in the present Public Interest Litigation and am well conversant with the facts and circumstances of the present matter from my personal knowledge and belief and hence am competent to swear this affidavit.
2. That I state that there is no personal gain, private motive or oblique reason in filing the present Public Interest Litigation.
3. That the content of above affidavit is true and correct to my personal knowledge and belief and nothing material has been concealed there from



DEPONENT

**VERIFICATION**

Verified at New Delhi on this 17 day of July 2020 that the contents of the above affidavit are true and correct to my knowledge and belief and nothing material has been concealed there from.



DEPONENT

## ANNEXURE P-1

## THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

In Pursuit of Professional Excellence

8<sup>th</sup> July, 2019

MCA/PD: 2019  
Shri Injeti Srinivas, IAS  
Secretary, Ministry of Corporate Affairs  
Government of India  
Shastri Bhawan, Dr. Rajendra Prasad Road  
New Delhi 110001

Sir,

Ref: Letter No. 17/33/2019-CL-V dated 17<sup>th</sup> June, 2019, received on 19<sup>th</sup> June, 2019 With reference to the above captioned letter, the Institute of Company Secretaries of India (ICSI) respectfully submits as under:

1. The ICSI welcomes the initiatives of Ministry of Corporate Affairs (MCA) to weed out inactive companies and disqualified directors, protect the public money, overcome the financial irregularities and increase the effectiveness of the governance mechanism. India is perhaps the only country where a form like INC-22A (ACTIVE) is introduced. Clearly, the Ministry of Corporate Affairs (MCA) is expecting to achieve significantly high level of governance norms and compliance mechanism. With this move, MCA has indicated that there is no room for inactive companies in the Registry of MCA.
2. That, upon receipt of the above mentioned letter dated 17<sup>th</sup> June 2019 from MCA along with representation of stakeholders, a Special Meeting of the Council of ICSI was convened on 27<sup>th</sup> June 2019, to have detailed deliberations on the matter. Each of the said representations that were

annexed to the said letter were deliberated threadbare. The individual responses to each representation are separately enclosed herewith and marked as 'Annexure A'. Further, the views of the Council of ICSI are submitted in the paragraphs herein below for your kind consideration. The concerns raised in the representations primarily relate to various issues like providing exemption to private companies, small companies, government companies, sick companies and dormant companies from filing FORM INC 22A (ACTIVE). In some of the cases, it is noted that non-appointment of Company Secretary has been cited as an impediment in filing the Form INC 22A (ACTIVE).

3. That in all the said letters, there is criticism of various initiatives of the Government, citing one difficulty or the other, whereas such initiatives viz. DIR-3 KYC, INC-22A (ACTIVE), DPT-3, SBO provisions etc. Are focused to promote governance and transparency in corporate India. There was a recent drive by the MCA to carry out director's KYC and the MCA has taken a firm stand whereby non-compliant directors were disqualified and non-compliant companies were struck off from the registry of MCA, similarly, to make a compliant corporate India, Company KYC drive by way of Form INC-22A (ACTIVE) has been initiated by the MCA, which every company is required to comply. In case any of the company could not comply with such initiatives of the government, such non-compliant Company should get marked as inactive.
4. That, such defiant attitude was witnessed at the time of launch of MCA 21 e- governance program and also the history repeated itself when the Companies Act, 2013 was

introduced. But the MCA has been constantly strengthening the compliance and governance framework. It can be observed that the persons who have made representations are all approaching with a negative mindset, and pleading ignorance of law as an excuse.

5. That those companies which are citing paid up capital as an issue have an option reduction of paid up capital but they have not chosen to reduce their paid up capital in last 5 years, since introduction of the Companies Act 2013, The companies having paid up share capital of Rs. 5 Crore or more, there is a requirement of appointment of a whole-time Company Secretary , as the very idea of the Government is to graduate such companies to a compliance driven and a far more governed platform, so that such companies could be bench marked vis-a-vis best governed companies, globally. By doing so, the government seeks to have better corporate governance standards for such companies.
6. That, these companies have also requested the MCA to drop all the new forms introduced by MCA in view of ease of doing business. As you are already aware that the World Bank has released its latest doing business report (DBR, 2019) on 31<sup>st</sup> October 2018, wherein India has recorded a jump of 23 positions against its rank of 100 in 2017 to be placed now at 77<sup>th</sup> rank among 190 countries assessed by the World Bank. This itself proves that the compliances introduced by the MCA have not been a hurdle in the Ease of Doing Business but has been an enabler for the same. That, if we closely look at the parameters on which the ranking is based, it aims at simplifying the procedure and time involved in carrying out the compliances, whereas the

appointment of Company Secretary is to ensure the compliances as an “officer in default” and also a “key Managerial Personnel” under the Companies Act, 2013 and the rules made there under.

7. That, the MCA has been initiating the ease of doing business by making events online and reducing the overall time taken and by making e-forms dynamic to the extent that various forms have even been categorized in STP mode and now the stakeholders get approval at the click of the button. But, despite such initiatives, there has been a tendency by handful of non-compliant persons to criticize and blame the system. In the past few years, the MCA has proposed various amendments in view of Ease of Doing business and kept only essential requirements which every corporate must follow.
8. That, one of total active companies, i.e. Approx. 11 lakh companies, only 39,805 companies are required to appoint a whole-time Company Secretary. We wish to submit that as on 1<sup>st</sup> July 2019, ICSI has 58,690 Company Secretaries on its register out of which only 10,644 are in practice. Accordingly, sufficient numbers of Company Secretaries are available to serve the Corporate India. Further, ICSI through its dedicated placement cell provides placement services to corporate to meet the demand and supply of the Company Secretaries across the country.
9. That, in view of the aforesaid, keeping in mind the role of Company Secretaries in enhancing governance standards internally within the corporate, we wish to submit that the present parameters for appointment of company secretary which are framed by the MCA after a lot of public debate



and deliberations are absolutely aligned with the present requirements; and therefore, to be kept intact. Needless to mention that the level of compliance as envisaged by the Government is rising day by day.

We shall be pleased to provide any further information or clarification in this regards on hearing from your goodself.

Thanking you,

Yours faithfully,

Sd/-

(CS Ashok Kumar Dixit)

Officiating Secretary

The Institute of Company Secretaries of India

Sl. No.	Name of the Company/ Stakeholders	Remarks of the Petitioner
1.	Chartered Accountant A. John Morris, Chennai. Letter Dated 09.04.2019.	No Merit. Chartered Accountant firm-The issue raised with professional biasness. <b>Copy of the profile collected from the public domain is enclosed herewith as ANNEXURE-_____.</b>
2.	G V K Power & Infrastructure Ltd. Letter dated 04.04.2019	The company has already company secretary since 01.10.2005 namely Mr. Puni Venkata Rama Seshu (PAN-ACUPP3819Q). Hence the grievances raised with malicious intents without being the interested party and is a big corporate house as it reflects from assets and charges as per the master data of MCA. <b>Copy of the same is enclosed herewith as Annexure No-_____.</b>
3.	Blue Berry Agro Products Pvt. Ltd. , Mumbai.	As per the master data and information collected from the website it's a big company but violating the express provision of law since 2014. <b>Relevant documents are enclosed herewith as Annexure --_____</b>
4.	Local Circle - Social Media Platform for Start Up.	Grievances pertain to other issues.
5.	A.P. Towers Ltd., Andhra Pradesh.	It is a PSU. The issue were raised for no attracting the company secretaries in view

		<p>of scales of pay. Hence, not relates to non availability of company secretaries. Institute has suggested fresher company secretaries and also to take the help of the placement cell of ICSI. Hence, no merit in the grievances.</p> <p><b>Copy of the Master Data and other information are enclosed herewith as Annexure -- )</b></p>
6.	Andhra Pradesh State Fiber Net Ltd.	<p>It also a PSU and has raised other issue not connected with company secretaries and have raised only the point of no able to attract company secretaries in view of low pay scales. Institute has suggested fresher company secretaries and also to take the help of the placement cell of ICSI. Hence, no merit in the grievances.</p>
7.	Tamilnadu Spinning Mills Association, Dindigul, Chennai.	<p>Have not mentioned the name of any company and have simply asked for exemption from filing of INC-22A ACTIVE stating that companies are not able to find the suitable candidate possessing the requisite qualification as company secretaries. ICSI has offered the services of placement cell if there is nay such instances. <b>Details of this firm downloaded from te website is enclosed herewith as Annexure -- )</b></p>
8.	South India Importers Association, Chennai.	<p>Have not mentioned the name of any company and have simply asked for exemptions of the private company stating the reason that most of the private companies are not able to find the suitable candidates possessing the requisite qualifications. However, the ICSI has clarified the issue and offered the placement cell services of ICSI for granting the relief if any such case exists hence, it was a roving grievances without any base to evade from the express provision of law.</p>
9.	P. Krishna & Associates, Chartered Accountant , Chennai.	<p>The issues were clarified by the ICSI and there remains nothing. The issue have been raised with the professional biasness to support the evading route of the express provision of law. The exemption was asked in the name of ease of doing business. There was no question of non availability of company secretaries.</p>
10.	Manjunath, Chartered Accountant, Chennai.	<p>The issue was clearly addressed by the ICSI. Further there was no question of non availability of the company</p>

		secretaries.
11.	Jainex Aamcol Ltd.	It is a listed company fully covered under the express provision of law. No question of non availability of company secretaries. Further the issue was addressed by the ICSI.
12.	Our Investments Enterprise Ltd., Ernakulum	As per the master data, the paid up capital of the company is Rs 20,21,100 and hence there is no need of appointment of company secretaries. The issue have been raised with malicious intents without being he interested party. Hnece, no merit.
13.	Agasthiyar Muni Child Care Centre, Kanyakumari District, South India.	The issue was raised that the company secretaries were not available in the market who are willing to join the companies of their size and operations. Issue was addressed completely by ICSI and have also offered the help of the placement cell of ICSI.
14.	P.H.D. Chamber of Commerce & Industry.	The issue was pertaining to technical issue of MCA portal and not related to company secretaries.
15.	Kaytee Corporation Pvt. Ltd., Mumbai	The case of the complainant is the clear violation of law and self admission for working on hiring of company secretaries only from last few months and it have been made with clear malicious intents and seems to be a fit case for legal action against them for non compliance of law. <b>Copy of Master data and other information s are enclosed herewith as Annexure- )</b>
16.	South India Mills Association	Without naming the company have made a roving allegation of non finding the company secretaries for few companies. ICSI has offered for immediate placement services if there is any case as such hence no merit in the case



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## ANNEXURE P-2

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

In Pursuit of Professional Excellence

25<sup>th</sup> July, 2019

MCA/PD: 2019

Shri Injeti Srinivas, IAS  
Secretary, Ministry of Corporate Affairs  
Government of India  
Shastri Bhawan, Dr. Rajendra Prasad Road  
New Delhi 110001

Ref: Letter No. 17/33/2019-CL-V dated 8<sup>th</sup> July, 2019, received  
on 9<sup>th</sup> July, 2019

Sir,

We wish to inform that the comments of the Institute of company Secretaries of India (ICSI) on the matter referred to in MCA letter dated 17<sup>th</sup> June, 2019 were submitted on 9<sup>th</sup> July, 2019. The copy of the said letter is at Annexure A for your kind reference, please.

Further, after examination of 18 further more representations, the comments of the ICSI on those are given at Annexure B.

We, once again, reiterate that the present parameters for appointment of Company Secretary which are framed by MCA after a lot of public debate and deliberations are absolutely aligned with the present requirement; and therefore, need to be

kept intact. Needless to mention that the level of compliance as envisaged by the Government is rising day by day.

We shall be pleased to provide any further information or clarification in this regard on hearing from your good self.

Thanking you,

Yours faithfully,

Sd/-

(CS Ashok Kumar Dixit)  
Officiating Secretary)  
The Institute of Company Secretaries of India

<b>Sl. No.</b>	<b>Name of the Company/ Stakeholders</b>	<b>Remarks of the Petitioner</b>
<b>1.</b>	Rosemary Joseph, Director, Sunsea Traders Ltd. Letter dated 14.06.2019.	Issue not relating to appointment of Company Secretary.
<b>2.</b>	Rosemary Joseph, Director, Sunsea Cruise Lines Ltd. Letter dated 14.06.2019.	Issue not relating to appointment of Company Secretary.
<b>3.</b>	Rosemary Joseph, Director, Sunsea Euro Ventures Ltd. Letter dated 14.06.2019.	Issue not relating to appointment of Company Secretary.
<b>4.</b>	Rosemary Joseph, Director, Seaways Maritime India Ltd. Letter dated 14.06.2019.	Issue not relating to appointment of Company Secretary.
<b>5.</b>	Rosemary Joseph, Director SunSea Travels (India) Ltd. Letter dated 14.06.2019.	Issue not relating to appointment of Company Secretary.
<b>6.</b>	Rosemary Joseph, Director Tradehall Markets Ltd. Letter dated 14.06.2019.	Issue not relating to appointment of Company Secretary.
<b>7.</b>	Aditya Garg (email dated 14.06.2019)	Issue not relating to appointment of Company Secretary.
<b>8.</b>	RSC International Ltd. Letter dated 08.06.2019	The company has raised the issue of non finding of Company Secretaries

		inspite of their efforts. The ICSI have clarified that he has never approached to the placement cell of ICSI and the information rendered by him is incorrect and have clarified the other issues in detail. The question is whether the company has complied the said provisions since 2013-14, 2014-15, 2015-16, 2016-17, 2017-18. Further, the company has already appointed the CS on 01.07.2019 after this notification of INC-22A and his allegation that no company secretary is available does not sustain and his matter already resolved.
9.	IMC Chambers of Commerce and Industry Letter dated 17.06.2019	The ICSI has already clarified its issues and suggested for fresher company secretary. They have also suggested to add turn over criteria and it has been also suggested by the ICSI and being supported and requested by the petitioner.
10	IMC Chambers of Commerce and Industry Letter dated 18.06.2019	Not pertains to the issue of appointment of company secretaries.
11.	Narayan Jain, patron Legal Relief Society Email dated 18.06.2019.	Roving statement have been made to increase the limit without any reason thereof hence does not sustain. It is also a case of professional biasness (To check the background of this society.)
12.	Southern India Mills Association Letter dated 13.06.2019.	Same letter have been sent twice and have already been clarified by the ICSI in its reply dated 08.07.2019.
13.	S Sundar Raman Email dated 13.06.2019	He is a practicing Chartered Accountant and have raised this objection due to professional biasness. No merit in the case. ICSI has already clarified the issue in detail.
14.	Ketan H Deshmukh	The issue is not relating to

	Email dated 18.06.2019	appointment of company secretaries
<b>15.</b>	Andhra Pradesh Airports Development Corporation Ltd. Letter dated 14.06.2019	The issue is also not relating to appointment of company secretaries
<b>16.</b>	Andhra Pradesh Airports Development Corporation Ltd. Letter dated 08.04.2019	The issue is also not relating to appointment of company secretaries
<b>17.</b>	CA K. Gopala Krishna Letter dated 11.06.2019	The issue is not relating to appointment of company secretaries
<b>18.</b>	Liquors India Ltd. Letter dated 26.06.2019.	This company is violating the law since long time and have not appointed company secretary inspite of clear provisions of law. When the Ministry have launched INC-22A and left no option for them they have came up with excuses of non availability if company secretary.



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## ANNEXURE P-3

## MINISTRY OF CORPORATE AFFAIRS

## NOTIFICATION

New Delhi, the 3<sup>rd</sup> January, 2020

G.S.R. 13(E).—In exercise of the powers conferred by sub-section (1) of section 203 of the Companies Act, 2013 (18 of 2013) read with section 469 of the said Act, the Central Government hereby makes the following rules further to amend the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, namely:- 1. (1) These rules may be called the Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2020. (2) They shall be applicable in respect of financial years commencing on or after 1<sup>st</sup> April, 2020. 2. In the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 (herein after referred to as said rules), for rule 8A, the following shall be substituted as under:- “8A. Every private company which has a paid up share capital of ten crore rupees or more shall have a whole-time company secretary.”. 3. In the said rules, in rule 9 of the said rules, in sub-rule (1), (i) after clause (b), at the end the word “or” shall be inserted. (ii) after clause (b), the following clause shall be inserted, namely:- “(c) every company having



outstanding loans or borrowings from banks or public financial institutions of one hundred crore rupees or more.”. (iii) the following Explanation shall be inserted, namely:- “Explanation :- For the purposes of this sub-rule, it is hereby clarified that the paid up share capital, turnover, or outstanding loans or borrowings as the case may be, existing on the last date of latest audited financial statement shall be taken into account.”.

[F. No. 01/05/2013-CL-V-Pt-I]  
KVR MURTY, Jt. Secy.

Note: The principal rules were published in the Gazette of India vide notification number G.S.R. 249(E), dated the 31st March, 2014 and lastly amended vide number G.S.R. 875(E), dated the 12<sup>th</sup> September 2018.



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## ANNEXURE P-4

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA  
In Pursuit of Professional Excellence

8<sup>th</sup> January, 2020

Dear Professional Colleagues,

Subject: Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2020

The Ministry of Corporate Affairs (MCA) vide notification dated 3<sup>rd</sup> January, 2020 has amended the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, effective from 1<sup>st</sup> April 2020, altering the threshold limits for mandatory appointment of Company Secretaries.

This amendment has increased the threshold limit from Rupees 5 (five) crore to Rupees 10 (ten) crore which has caused apprehensions in minds of our esteemed members and students. While, we truly appreciate your concern, we also wish to submit that such revision of limits have been part and parcel of our professional journey and such limits have undergone changes from time to time as under:

Year	Threshold Limit
1975	Rs. 25 lakh or more
1988	Rs.50 Lakh or more
2002	Rs. 2 Crore of more
2009	Rs. 5 Crore
2020	Rs. 10 Crore

We submit the following facts for your kind reference:

Date	Particulars
25 <sup>th</sup> February, 2019	Notification of e-Form INC-22A

	(ACTIVE), which was much appreciated by stakeholders
15 <sup>th</sup> June, 2019	Last Date of filling e-Form INC-22A Subsequently, large number of companies were marked as Active Non Complaint due to non-filing of e-Form INC-22A and one of the reason was non-appointment of Company Secretary
17 <sup>th</sup> June, 2019	Letter from MCA forwarding representations from various stakeholders expressing difficulties in filling e-Form INC-22A
22 <sup>nd</sup> June, 2019	Writ petition filed before the Hon'ble Court of Delhi against existing threshold limits for mandatory appointment of Company Secretaries
27 <sup>th</sup> June, 2019	Special Council Meeting convened to deliberate on above issue
8 <sup>th</sup> July, 2019	Response from ICSI to MCA Letter requesting status quo on Rule 8A which was also hosted at ICSI website
8 <sup>th</sup> July, 20169	Letter from MCA forwarding further representations
10 <sup>th</sup> July, 2019	Decision of the Special Council meeting hosted at ICSI website
25 <sup>th</sup> July, 2019	ICSI response to MCA Letter which was simultaneously hosted at ICSI website and was followed by several meetings with MCA
30 <sup>th</sup> July, 2019	Issues raised by one Member of Parliament in Rajya Sabha on mandatory appointment of Company Secretaries and response of Hon'ble Minister of Finance and Corporate Affairs on the floor of the House being principle stakeholder, ICSI approached MCA to understand the rationale for considering revision in limits under Rule 8A
5 <sup>th</sup> October, 2019	Special Council Meeting followed by meeting with MCA to brief the decision of the meeting

In view of requirements of filling e-Form INC-22A, representations against rule 8A and also writ petition in the Hon'ble High Court (suprisingly by our own members), MCA started considering the revision in the limit. It was because of your Institute's continuous involvement and representations, the enhancement in limits has been limited to Rs.10 crore only and not beyond.

We wish to place on record that the Corporates have resposed faith and confidence on our members because of their skills, knowledge, capability and for value they create for the organization and not because of merely statutory requirement. We believe, that impact of the Amendment Rules may not be significant as number of ACTIVE non-compliant companies are still very large in number which provides ample scope for the employment of company secretaries.

We assure that the ICSI is committed to provide whole- hearted support to its members and students and will take all necessary measures as may be required.

We earnestly appeal all our members and students not to post any derogatory or defamatory remarks against the Regulators, stakeholders or institute on the social media or by any other means, keeping in view its far- reaching impact on the credibility of the profession. We request all our members to kindly maintain and uphold highest standards of professionalism and conduct themselves in a manner befitting the profession. As members of one of the top most professional institutions, it is our prime responsibility to follow ethics and good governance in our personal conduct as well.

We once again thank all our members for rendering us strength and assure that the Institute will put in its best of efforts all our members for rendering us strength and assure that the Institute will put in its best of efforts in promoting the cause of profession.

Regards

CS Ranjeet Pandey  
President  
The Institute of Company Secretaries of India

A blue rectangular stamp containing a handwritten signature in black ink. The signature appears to be 'Ranjeet Pandey'.

TRUE TYPED COPY

## ANNEXURE P-5

ICSI/Sec/1/2020  
9<sup>th</sup> January,2020

To,  
The Chairmen and Member of the regional Councils, ICSI  
The Chairmen and Members of the Managing Committees of the  
Chapters, ICSI  
The Regional Directors/Executive Officers/I/C Chapters  
The Director- CCGRT, Navi MUMBAI, I/C-COE Hyderabad

Subject:- Amendment in the Companies (Appointment and  
Remuneration of Managerial Personal), Rules, 2014.

WHEREAS, the Ministry of Corporate Affairs (MCA)  
Government of India has issued a Notification dated 3rd  
January,2020 amending Rule 8A of the Companies  
(Appointment and Remuneration of the Managerial Personal),  
Rules, 2014.

WHEREAS, in the wake of amendment in the rule 8A, there has  
been certain apprehensions in the minds of the minds members  
and the stakeholders and concerns have also been raised.

WHEREAS, the ICSI has issued a communication dated 8th  
January, 2020 to all the members and student of the ICSI in the  
matter, Furthermore, the ICSI is in process of taking up the  
matter with the MCA once again to place the concerns and  
grievances of the members and stakeholders.

AND THEREFORE, it is advised to refrain from making any  
derogatory or defamatory comment against the MCA or the ICSI.

FURTHER, You are advised to refrain from facilitating the demonstrations by the members and the students.

ALSO, the Regional Councils/ Chapters/Units are advised not make any representation in this regard at their and directly to any authority/ Forum, as the Institute is already in process of once again taking up the matter with the MCA.

SD/-

(CS. Ashok Kumar Dixit)

Officiating Secretary, ICSI



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## ANNEXURE P-6

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

In Pursuit of Professional Excellence

10<sup>th</sup> January 2020

PD: MCA/Jan

Shri Injeti Srinivas, IAS  
Secretary, Ministry of Corporate Affairs  
Government of India  
Shastri Bhawan, Dr. Rajendra Prasad Road  
New Delhi 110001

Sir,

Subject: Companies (Appointment and Remuneration of  
Managerial Personnel) Amendment Rules 2020

This has reference to Ministry's Notification dated 3<sup>rd</sup> January  
2020 amending the Companies ( Appointment and Remuneration  
of Managerial Personnel) Rules 2014 thereby altering the limits  
for mandatory appointment of whole-time Company Secretaries  
from rupees 5 (five) crore to rupees 10(ten) crore.

We humbly submit that the amendment has caused apprehension  
in the minds of our members and students and there has been lot  
of resentment in the fraternity across the country.

Company Secretary is recognized as Compliance Officer under  
the Companies Act as well as by other Regulators such as SEBI.  
His role includes advising the board on good governance



practices and compliance of rules and regulations. He commands high position in the value chain and acts as conscience keeper of the company. The Company Secretary is a unique interface between the board and management and as such acts as an important link between the board and the business.

The Company Secretary has an important role to play in organizing and implementation of decisions of Board, its Committees and the general body meetings mandated under law. With greater focus on governance, the stakeholders expectations are increasing and it is this need that has led to rise of the importance of role of Company Secretary.

In view of the above, it is in the best interest of the corporate world, to have Whole - time Company Secretary, who protects and promotes Corporate Governance.

Hence, we humbly request your good office to kindly consider further amendment in the rule, taking into kind consideration, following suggestions:

**SUGGESTION -1:**

Every company which has a paid up share capital of more than Rs 5 Crores and up to Rs 10 Crores and

- a. Turnover of hundred Crores rupees or more; or

- b. Outstanding loans or borrowings from banks or public financial institutions of one hundred crores rupees or more;

Shall have a Whole Time Company Secretary.

Explanation- For the purpose of this sub rule, the paid up share capital, turnover, or outstanding loans or borrowings as the case may be, existing on the last date of latest audited financial statement may be taken into account.

**Or ALTERNATE SUGGESTION -2:**

Every Company which has:

- a. A paid up share capital of ten crores rupees or more;
- b. Turnover of one hundred crores rupees or more; or
- c. Outstanding loans or borrowings from banks or public financial institutions of one hundred crores rupees or more.;

Shall have a Whole Time Director.

Explanation:- For the purpose of this sub rule, the paid up share capital, turnover, or outstanding loans or borrowings as the case may be, existing on the last date of latest audited financial statement may be taken into account.

**Justification for submission**

The companies have proper and significant business operations which triggers compliance with various laws. In absence of services of Whole-Time Company Secretaries, these active companies may be exposed to greater regulatory risk and non-compliance. Further, in such companies, public interest is also

involved and following good governance practices becomes more significant.

We request you to kindly consider the above submissions favorably and we shall be pleased to provide any further information or clarification on hearing from MCA.

Thanking you,

Yours faithfully

Sd/-

(CS Ranjeet Pandey)

President

The Institute of Company Secretaries of India



TRUE COPY

Dated : 11.01.2020

To,

**Mr. Ranjeet Pandey**

**President ICSI**

The Institute of Company Secretary of India

ICSI House, Lodhi Road,

New Delhi - 11000

**Request for open house session / presentation on companies (appointment and remuneration of managerial personal) amendment rules - 2020, for better presentation before the ministry (MCA).**

Dear sir,

This is with reference to the captioned subject and the Ministry of Corporate Affairs notification dated 3<sup>rd</sup> January 2020 thereby altering the paid-up capital limits for the appointment of Company Secretary in companies.

In this regards I would suggest for a full day open house discussion between council members and members of the ICSI for soliciting their views, ideas, and inputs for making a better representation before the ministry (MCA). I would like to make a detailed presentation in the open house of any difficulties before the council members which can be helpful. The ICSI may invite the other senior member for presentation on this subject.

Further it should be noted that non filing of Form NIC 22 for non-availability of our members are meaningless. The INC 22 required various mandatory field including the correct and certified details of registered offices. Their latitude and longitudes along with photographs of the concerned responsible officials. Therefore non filing of INC 22 can be due to various reasons. It is also non digestible that the MCA have received the complaint from 16,000 companies that they have put their best efforts an advertisement but in spite of that no company Secretaries are available in the market, further in the past more than 6 Lakhs companies closed / strike off due to continued non compliances and traceability. Still there are companies with high paid-up capital but without any whereabouts or with fake and dummy registered offices which can be the reason of non filing of INC 22 beside others. Hence there are no questions that our members are not available in the market further there was options to liberalized the INC 22 if needed but there was no question of reducing the capital. It seems an action due to the mis representation of the fact by the beneficial parties of competitive institution if any. Hence there is need to check the current situation with facts and figures and open house session will be good option.

Note only this is was also one of my agenda item in my manifesto vide point no. 23 “ **A separate wing for continued industrial research, demand and supply of the members to the industry, understanding the business needs and the industries expectations.** ” also vide point no 24 “ **changes as suggested and solicited from the members.**”

We have trained and developed more than 55,000 members for the industry who are contentiously dealing with various critical issues of their ground and company and can give better input, not only on current question but on overall development.

We appreciate for urgent representation by your good self dated 10<sup>th</sup> of January, 2020. However additional representation can be made with strong possibilities of value addition.

Please consider do the needful and oblige.

Thanking you,

SD/-

**Suman Kumar**

M. No. FCS 5824.

Address : 22/11, 2<sup>nd</sup> Floor, Back Side, Near Patel Park,  
West Patel Nagar, New Delhi - 110008.

Mobile No. +91 9958299558

**C.C. Secretary to ICSI**



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## THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

In Pursuit of Professional Excellence

03 February 2020

PD: MCA/Jan 2020/1

Shri Injeti Srinivas, IAS  
Secretary, Ministry of Corporate Affairs  
Government of India  
Shastri Bhawan, Dr. Rajendra Prasad Road  
New Delhi 110001

Sir,

Subject: Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2020 notified on 3<sup>rd</sup> January, 2020

Further to our letter dated 10<sup>th</sup> January, 2020 on the above mentioned subject wherein it was submitted that the alteration in the limits for mandatory appointment of whole time Company secretaries from rupees 5 (five) crores to rupees 10(ten) crore, it has caused apprehension for loss of employment in the minds of our members and students.

We wish to reiterate that a Company Secretary is recognized as Compliance Officer under the Companies Act as well as by other Regulators such as Securities Exchange Board of India. His role includes advising the board on good governance practices and compliance of rules and regulations. He commands high position in the value chain and acts as conscience keeper of the company. The Company Secretary is a unique interface between the board and management and as such acts as an important link between the board and the stake holders.

The Company Secretary has an important role to play in organizing and implementation of decisions of Board, its Committees and the general body meetings mandated under law. With greater focus on governance, the stakeholders expectations are increasing and it is this need that has led to rise of the importance of role of Company Secretary.

In view of the above, it is in the best interest of the corporate world, to have Whole - time Company Secretary, who protects and promotes Corporate Governance.

Hence, we humbly request your good office to kindly consider further amendment in the rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules 2013, taking into consideration inserting the following in place of the existing provision.

“Every company which has:

- A. a paid-up share capital of ten crore rupees or more; or
  - B. net worth of one hundred crore rupees or more; or
  - C. outstanding loans or borrowings from banks or public financial institutions of one hundred crore rupees or more; or
  - D. turnover of two hundred fifty crore rupees or more
- shall have a Whole time Company Secretary.

Explanation- For the purpose of this sub rule, the paid up share capital, networth, outstanding loans or borrowings or turnover, as the case may be, existing on the last date of latest audited financial statement may be taken into account.

Every company which ceases to be a company covered under Rule 8A for three consecutive financial years shall not be



required to appoint Company Secretary till such time it meets the criteria specified in Rule 8A”

Justification for submission

The Companies have proper and significant business operations which triggers compliance with various laws. In absence of service of whole time Company Secretaries, these active companies may be exposed to greater regulatory risk and non-compliances. Further, in such companies, public interest is also allowed involved and following good governance practices becomes more significant.

We request you to kindly consider the above submissions favorably. We shall be pleased to provide any further information or clarification on hearing from your good self.

Thanking you,

Yours faithfully,

Sd/-

(CS Ashok Kumar Dixit)

Officiating Secretary

The Institute of Company Secretaries of India



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## ANNEXURE-P-9

**FORM NO. DIR-12**

[Pursuant to sections 7(1) (c), 168 & 170 (2) of The Companies Act, 2013 and rule 17 of the Companies (Incorporation) Rules 2014 and 8, 15 & 18 of the Companies (Appointment and Qualification of Directors) Rules, 2014]

Particulars of appointment of directors and the key managerial personnel and the changes among them

**Form Language**            English            Hindi

**Refer the instruction kit for filing the form.**

1. \*This form is for     New company     existing company

2. (a) \* Corporate Identity Number (CIN) of company

U17120MH1994PTC079375

(b) Global location number (GLN) of company

Pre-fill

3. (a) Name of the company

KAYTEE CORPORATION PRIVATE LIMITED

(b) Address of the registered office of the company

51, FLOOR-5, PLOT-230, SAKHAR BHAVAN  
RAMNATH GOYANKA MARG, NARIMAN POINT  
MUMBAI  
Mumbai City  
Maharashtra  
400021

(c) E-mail ID of the company

sec@kaytee.co.in

4. Number of Managing director or director(s) for which the form is being filed

5. Details of the Managing Director, directors of the company

## 1 Details of the Managing Director or Director of the company

i Director Identification Number(DIN)

Pre-fill

ii Name

iii Father's name

iv Present residential address

v Nationality

vi Date of birth

vii Gender

viii  Appointment  Cessation  Change indesignationx Date of Appointment or  
change in designation

ix Designation

(DD/MM/YYYY)

xi Category

xii Whether Chairman, Executive Director, Non-Executive Director

 Chairman  Executive director  Non Executive Director

xiii DIN of such director to whom appointee is alternate

Pre-fill

xiv Name of the director to whom such  
appointee is alternatexv Name of the company or institution whose nominee the  
appointee is

xvi E-mail ID of director

xvii In case of cessation

Hereby confirmed that the above mentioned  Director  Managingdirector xviii is not associated with the company  
with effect from  (DD/MM/YYYY) xix due to

## xx Interest in other entities

xxi Number of such entities

xxii \* CIN/LLPIN/FCRN/Registrationnumber

Pre-fill

xxiii \*Name

xxiv \*Address

## xxv Nature of interest

xxvi \*Designation

xxvix Percentage of Shareholding

xxviii Amount

xix Others (specify)

6. Number of manager(s), secretary(s), Chief Financial Officer or Chief Executive Officer for which the form is being filed

7. Details of manager(s), secretary(s), Chief Financial Officer or Chief Executive Officer of the company

1	i Director Identification Number (DIN), if any	<input type="text" value="03547507"/>	<input type="button" value="Pre-fill"/>
	ii Income Tax permanent account number (PAN)	<input type="text" value="ABVPB2623E"/>	<input type="button" value="Verify Details"/>
	iii <input type="radio"/> Appointment <input checked="" type="radio"/> Cessation		
	iv Membership number of the secretary	<input type="text" value="9113"/>	
	v First Name	<input type="text" value="SHYAM"/>	
	vi Middle	<input type="text" value="BALKRISHNA"/>	
	Namevii	<input type="text" value="BHATTBHATT"/>	
	LastName	<input type="text" value="BHATTBHATT"/>	
	ix First Name	<input type="text" value="BALKRISHNA"/>	
	x Middle Name	<input type="text" value="SHRIRAM"/>	
	xi Last Name	<input type="text" value="BHATTBHATT"/>	
	xii Present residential address xiii Line I	<input type="text" value="301, Green Valley CHS, Plot No - 26,"/>	
	xiv Line II	<input type="text" value="Sector- 19, Nerul East, Agarwal Corner"/>	
	xv City	<input type="text" value="Mumbai"/>	
	xvi State	<input type="text" value="Maharashtra"/>	xvii Pin Code <input type="text" value="400706"/>
	xviii ISO Country Code	<input type="text" value="IN"/>	
	xix Country	<input type="text" value="INDIA"/>	
	xx Phone	<input type="text" value="9819056299"/>	xxi Fax <input type="text"/>
	xxii Date of birth	<input type="text" value="01/01/1967"/>	(DD/MM/YYYY)
	xxiii Designation	<input type="text" value="Secretary"/>	
	xxiv Date of Appointment or cessation	<input type="text" value="01/02/2020"/>	(DD/MM/YYYY)
	xxv E-mail ID	<input type="text" value="sbbhattbhatt@gmail.com"/>	

### Attachments

List of attachments

- (1) Declaration by first director
- (2) Declaration of the appointee director in Form No. DIR-2;
- (3) Notice of resignation;
- (4) Evidence of cessation;
  
- (6) Optional attachment(s) - if any.

Attach

Attach

Attach

Attach

  

Attach

Resignation Letter Resolution ShyamKayte

Remove attachment

**Declaration**

I \*

- A person named in the articles as a
- (in case if a new company) or
- authorized by the Board of Directors of the Company vide number dated
- of the company

to sign this form and declare that all the requirements of Companies Act, 2013 and the rules made thereunder in respect of the subject matter of this form and matters incidental thereto have been complied with. I also declare that all the information given herein above is true, correct and complete including the attachments to this form and nothing material has been suppressed.

\* To be digitally signed by



\* Designation

\* Director identification number of the director; or DIN or PAN of the manager or CEO or CFO; or Membership number of thesecretary

#### Certificate by practicing professional

I declare that I have been duly engaged for the purpose of certification of this form. It is hereby certified that I have gone through the provisions of the Companies Act, 2013 and Rules thereunder for the subject matter of this form and matters incidental thereto and I have verified the above particulars (including attachment(s)) from the original/certified records maintained by the Company/applicant which is subject matter of this form and found them to be true, correct and complete and no information material to this form has been suppressed. I further certify that:

- The said records have been properly prepared, signed by the required officers of the Company and maintained as per the relevant provisions of the Companies Act, 2013 and were found to be in order ;
- All the required attachments have been completely and legibly attached to this form;
- It is understood that I shall be liable for action under Section 448 of The Companies Act, 2013 for wrong certification, if any found at any stage.

\* To be digitally signed by



- Chartered accountant (in whole-time practice) or  Cost accountant (in whole-time practice) or
- Company secretary (in whole-time practice)

\* Whether Associate or fellow  Associate

FellowMembership number

Certificate of Practice Number

Modify

Check Form

Prescrutiny

Submit

This eForm has been taken on file maintained by the Registrar of companies through electronic mode and on the basis of statement of correctness given by the filing company.



A handwritten signature in blue ink, appearing to read 'Pranabpalca', written over a horizontal line.

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## ANNEXURE P-10

**The Relevant Extracts of Annual Report 2018-2019 of**  
**Ministry of Corporate Affairs**

## CHAPTER – III

## Registration and Closure of Companies

3.1.1 The number of companies registered under various Companies Act in India has increased steadily over the years. While 896 companies were registered during the year 1956-57, this number increased to 1,23,938 companies during the Year 2018-19. This Chapter reviews registration as well as closure of companies and number of active companies under various categories in terms of their ownership and main business activities etc. Summary Statistics of Indian Companies as on 31<sup>st</sup> March, 2019

3.1.2 The total number of companies registered in the country as on 31<sup>st</sup> March, 2019 was 18,73,044. Of these, 6,70,018 companies were closed; 1,615 companies were assigned dormant status as per the Companies Act, 2013 (Section 455), 6,327 companies are inactive<sup>3</sup>; 38,610 companies were under the process of closure; 100 companies were in the process of being re-activated. Taking the above into account, there were 11,56,374 active companies as on 31<sup>st</sup> March, 2019. Table 3.1 below provides a statistical summary of number of companies.

Table 3.1

Summary Statistics of Indian Companies as on 31<sup>st</sup> March, 2019

S. No.	Description	No. of Companies
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1	Total Companies Registered	1,873,044
2	Companies closed	670,018
3	Dormant u/ s 455 of Companies Act, 2013	1,615
4	Inactive u/ s 455 of Companies Act, 2013	6,327
5	Companies under process for closure	38,610
6	Active In-Progress (Inactive companies under 21-day window for completion of pending filing)	100
7	Active Companies (1-2-3-4-5-6)	1,156,374

Chart 3.1 reveals that out of total 18,73,044 companies registered in India, more than one lakh companies were registered in states such as Maharashtra (3,70,986), followed by Delhi (3,33,733), West Bengal (2,01,792),

Tamil Nadu (1,42,765), Kamataka (1,15,926), Telangana (1,05,072), Uttar Pradesh (1,04,966) and Gujarat (1,00,191) as on 31st March, 2019.



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## ANNEXURE P-11

**The Relevant Extracts of Annual Report 2018-2019 of**  
**Ministry of Corporate Affairs**

Registrar by company regarding the number of layers of subsidiaries) and CODS 2018 in Feb-Mar '2018.

v. eKYC drive for directors of all companies: MCA has introduced a mandatory eform viz. DIR-3 KYC for all DIN holders who have been allotted DIN on or before 31st March, 2018 and whose DIN is in approved status. This drive is aimed at verification of individual DIN holders and weed out non-existent/dummy DIN holders and ultimately to clean up the Directors' e-Registry. The KYC process is obtaining additional details such as AADHAAR, Passport, personal Mobile Number and personal E-mail ID. Further, for stakeholders who do not possess AADHAAR, an exception management is provided. There are around 33 Lakh DINs in the registry and around 15.88 Lakh DIN holders have filed DIR KYC as on 30th November, 2018. In this drive, MCA managed to feed 11 lakh Aadhar card holders. This is one of its kinds of drive carried out anywhere in India.

vi. Integrated form for LLP (FiLLiP) incorporation: Introduction of a new integrated Form christened FiLLiP (Form for incorporation of Limited Liability Partnership) replacing the erstwhile Form 2 (Incorporation document and subscriber's statement) combining therein 3 services of name reservation, allotment of Designated Partner Identification Number (DPIN/DIN) & incorporation of the LLP.

## 8.5.2 Process Re-engineering of LLP Incorporation Related

Form Changes at a glance is as follows:-

S. No.	Existing eForm	Neweform	Change Proposed	To be processed by
1	Form 1(Application for reservation or change of name)	LLP-RUN (Reserve Unique Name) Web Service	Web Service RUN will replace Form 1	Central Registration Centre (CRC) under Non-STP
2	Form 2(Incorporation document and Subscriber's statement)	FiLLiP (Form for incorporating LLP)	I. FiLLiP will be an integrated form offering multiple services viz. allotment of DIN/Reservation of Name and Incorporation of LLPs. II. Consequent upon notification of FiLLiP, existing Form 2 will be deprecated.	Central Registration Centre (CRC) under Non-STP
3	Addendum to Form 2 (Details in respect of designated partners and partners of Limited Liability Partnership)	Addendum to FiLLiP(Details in respect of designated partners and partners of Limited Liability Partnership)	I. RUN-LLP SRN to be substituted for Form 1 SRN in relevant field II. PAN is allowed to be entered in DSC section	Central Registration Centre (CRC) under Non-STP



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## ANNEXURE-P-12

<b>BSE DB - List of Companies referred to as Vanishing Companies as on March 31, 2019</b>		
<b>Sr.</b>	<b>Name of the Company</b>	<b>Exchange</b>
1	C F TECHNOLOGIES LTD	BgSE
2	ESSEMM INFORMATION SYSTEMS LTD	BgSE
3	KRISN INFORMATION TECHNOLOGIES LTD	BgSE
4	SCARLET FLOWERS & AGRITECH LTD	BgSE
5	THUNGABADRA PULPS & BOARDS MILLS LTD	BgSE
6	UNION HOME PRODUCTS LTD	BgSE
7	ASSAM ISPAT LTD	Gauhati SE
8	ELLENBARRIE STEELS LTD	Gauhati SE
9	ELLENBARRIE CONSTRUCTIONS LTD	Gauhati SE
10	HIM CONTAINERS LTD	Gauhati SE
11	JASMINE LTD	Gauhati SE
12	KAVERI INDIA LTD	Gauhati SE
13	PRAGATI IMPEX LTD	Gauhati SE
14	SAGAR INDUSTRIES LTD	Gauhati SE
15	SANGRAIL COMMERCIAL LTD	Gauhati SE
16	SUPER IMPEX LTD	Gauhati SE
17	ZENITH ENTERPRISES LTD.	Gauhati SE
18	ABHYUDYA TRADING LIMITED	Gauhati SE
19	ASSOCIATED ENTRADE LTD	Gauhati SE
20	ARIHANT FINVEST LTD.	Gauhati SE
21	BOSCON INDIA LTD	Gauhati SE
22	SKY SCRAPER APARTMENTS LTD	Gauhati SE
23	DIRC INVESTMENTS LTD	Gauhati SE
24	ESSAR ENTRADE LTD	Gauhati SE
25	FAIRWELL FINANCE LTD	Gauhati SE
26	KAMAL OVERSEAS LIMITED	Gauhati SE
27	NEELAM COMMERCIAL COMPANY LTD	Gauhati SE
28	NECEM CEMENTS LTD	Gauhati SE
29	PARAMOUNT COMMERCIAL LTD	Gauhati SE
30	PURBANCHAL STEEL LTD	Gauhati SE
31	PURBANCHAL TRADE AND INDUSTRIES LTD	Gauhati SE
32	VENKATESHWAR VANIJYA INDIA LTD	Gauhati SE
33	VICTORIA TRADE AND FINANCE LTD	Gauhati SE
34	YACHT TRADE AND FINANCE LTD.	Gauhati SE
35	ASSAM IMPORT AGENCY LTD	Gauhati SE
36	ASSAM OSHZAN LTD	Gauhati SE
37	B.G INDUSTRIES LTD	Gauhati SE
38	CHARIOT AUTO ACCESSORIES LTD	Gauhati SE
39	BDDBS ASSOCIATES LTD	Gauhati SE
40	CHITRAKOOT FINANCE LTD	Gauhati SE
41	CURRENT ELECTRONICS LTD	Gauhati SE
42	DIMURTI FINANCE & INVESTMENT CO. LTD	Gauhati SE
43	DRUZHBA ENGINEERING INDIA LTD	Gauhati SE
44	INDRAPRASTHA HOLDINGS LTD	Gauhati SE

45	ISPAT SHEETS LTD	Gauhati SE
46	MACNEILL LEASING & FINANCIAL SERVICES LTD	Gauhati SE
47	NEW MILLENNIUM HEALTH CARE PROUDUCTS & EQUIPMENTS LTD	Gauhati SE
48	MOVIE (INDIA) LTD	Gauhati SE
49	NEW CENTURY FINANCIAL SERVICES LTD.	Gauhati SE
50	NORTH EASTERN INDIA EXPORTERS & IMPORTERS LTD	Gauhati SE
51	NOVELTY TRADERS LTD	Gauhati SE
52	TECHNO PULP & PAPER BOARD PRODUCTS LTD	Gauhati SE
53	PURVANCHAL BUSINESS PROMOTIONS LTD	Gauhati SE
54	PURBANCHAL FINANCE LTD	Gauhati SE
55	SRG CUSTODIANS & SECURITIES (INDIA) LTD	Gauhati SE
56	SUNLIGHT REAL ESTATE & DEVELOPERS LTD.	Gauhati SE
57	VIVEK FERTILIZERS LTD	Gauhati SE
58	EASTERN MINING & ALLIED INDUSTRIES LTD	Gauhati SE
59	S.B. OVERSEAS LTD	Gauhati SE
60	SANKARDEV COKE PRODUCTS LTD	Gauhati SE
61	SUN BIOTECHNOLOGY LTD.	Gauhati SE
62	GOLDLINE ENTERPRISES LIMITED	OTC
63	MAGNUM POLYMERS INDIA LIMITED	OTC
64	RAGAVENDRA SPINNERS LIMITED	OTC
65	S. B. INTERNATIONAL LIMITED	Gauhati SE
66	AASHI IND. LTD.	Vadodara SE
67	ADVANCE BIO-COAL (INDIA)LTD.	Vadodara SE
68	AESCULAPIUS REMEDIES LTD.	Vadodara SE
69	AIR COMMAND AIRTECH Ltd.	Vadodara SE
70	AIRCOMMAND INDIA LTD.	Vadodara SE
71	ALMAK STEELS LTD.	Vadodara SE
72	ALPS BPO SERVICES LTD.(ALPS INFOYS LTD. )	Vadodara SE
73	AMARSHIV OPTICALS LTD.	Vadodara SE
74	AMIGANGA INFRASTRUCTURE LTD.	Vadodara SE
75	ANAGRAM FINANCE LTD.	Vadodara SE
76	ANAND DAIRY LTD.	Vadodara SE
77	ANICHEM INDIA LTD.	Vadodara SE
78	ANKUJ ZINC OX-LTD.	Vadodara SE
79	APPLE MUTUAL FUND	Vadodara SE
80	ARCHON ENGINEERING CO. LTD.	Vadodara SE
81	ARROW MACCO (INDIA )LTD.	Vadodara SE
82	ARVIN LIQUID GASES LTD.	Vadodara SE
83	ASIAN INDEPENDENT NETWORK LTD.	Vadodara SE
84	BARODA AGRO INDUSTRIES LTD.	Vadodara SE
85	BARODA ALLOYS & CASTING LTD.	Vadodara SE
86	BARODA CARBONS LTD.	Vadodara SE
87	BARODA DYING LTD.	Vadodara SE
88	BARODA FERROW ALLOYS AND IND. LTD.	Vadodara SE
89	BENZO PETROCHEMICAL LTD.	Vadodara SE
90	BHARAT FORGE AND PIPES LTD.	Vadodara SE
91	CAMEX INTERMIDIATES LTD.	Vadodara SE

92	CHOKSI ANALYTICAL SERVICES LTD.	Vadodara SE
93	CONTINENTAL FORGING LTD.	Vadodara SE
94	CROWN LEASING & FINANCE LTD.	Vadodara SE
95	CROWN TRADERS LTD.	Vadodara SE
96	D R SOFTECH & IND. LTD.	Vadodara SE
97	DADA CHEMICALS LTD	Vadodara SE
98	DINESH ALLORGA LTD.	Vadodara SE
99	DO-MAX STEEL LTD.	Vadodara SE
100	ELVIS INDIA LTD.	Vadodara SE
101	GOKUL AGRO IND.LTD.	Vadodara SE
102	GOODEARTH INDUSTRIES LTD.	Vadodara SE
103	GOODEARTH ORGANICS (INDIA) LTD.	Vadodara SE
104	GUJARAT APPARELS LTD.	Vadodara SE
105	GUJARAT BONANZA AUTO STEEL LTD.	Vadodara SE
106	GUJARAT CONCAST LTD.	Vadodara SE
107	GUJARAT INDO LUBE LTD	Vadodara SE
108	GUJARAT RODREL ENGG. PRODUCTS LTD.	Vadodara SE
109	HARIHAR CHEM LTD.	Vadodara SE
110	HAVMORE FINANCIAL SERVICES LTD.	Vadodara SE
111	HINDUSTAN NITROPRODUCTS GUJARAT LTD.	Vadodara SE
112	INDO AMERICAN CREDIT CORP. LTD.	Vadodara SE
113	INTEGRA INDIA GROUP COMPANY LTD.	Vadodara SE
114	JAYANT SECURITIES AND FINANCE LTD.	Vadodara SE
115	KANORIA DYECHEM LTD.	Vadodara SE
116	KARTIKEYA AGRO PRODUCTS LTD.	Vadodara SE
117	KRUNAL CONSTRUCTION & FINANCE LTD.	Vadodara SE
118	LMP GUJARAT AGRO EXPORTS LTD.	Vadodara SE
119	LYONS TECHNOLOGIES LTD.	Vadodara SE
120	MANAV YARN PRODUCTS LTD.	Vadodara SE
121	MANISH ORGANICS INDIA LTD.	Vadodara SE
122	MARG TECHNO PROJECTS LTD.	Vadodara SE
123	MEHAR SHREE LEASING & FINANCE LTD.	Vadodara SE
124	METABOND IND.LTD.	Vadodara SE
125	NALSAROVAR RESORTS LTD.	Vadodara SE
126	NATURAL EXPOAGRO INDUSTRIES LTD.	Vadodara SE
127	NATURO PEST LTD.	Vadodara SE
128	NAVAKARRAI SPINNERS LTD.	Vadodara SE
129	NEON RESINS & IND. LTD. (BINACA SYNTI)	Vadodara SE
130	NEWTON ENGINEERING AND CHEMICALS LTD.	Vadodara SE
131	NOSLAR (INDIA)LTD.	Vadodara SE
132	PACMAN COMPUTERS SYSTEMS LTD.	Vadodara SE
133	PAN INDIA DRUGS AND CHEMICALS LTD	Vadodara SE
134	PARAMANI REPLAST LTD.	Vadodara SE
135	PARASHAR DEVELOPMENT LTD.	Vadodara SE
136	PROFITCORE PIPES LTD.	Vadodara SE
137	PROTECH CIRCUIT BREAKERS LTD.	Vadodara SE
138	PROTECH SWITCHEARS LTD.	Vadodara SE

139	PUNJAB LEASE FINANCING LTD	Vadodara SE
140	RACHANA CAPITAL & SECURITIES LTD.	Vadodara SE
141	RAINBOW HSG. DEVELOPMENT CORPN.LTD.	Vadodara SE
142	RAMSUNAR ROLESTEEL LTD.	Vadodara SE
143	RAVAL FINANCE LTD.	Vadodara SE
144	RAVI CEMENT LTD.	Vadodara SE
145	RAVLON PEN CO. LTD.	Vadodara SE
146	READY FOODS LTD.	Vadodara SE
147	ROLEX PHARMACEUTICALS LTD.	Vadodara SE
148	ROYAL FINANCE LTD	Vadodara SE
149	ROYAL RESORTS & HOTELS LTD.	Vadodara SE
150	S K LEA FINVEST LTD.	Vadodara SE
151	SAGAR APPARELS LTD.	Vadodara SE
152	SANDEEP IND.LTD.	Vadodara SE
153	SARIGAM STEELS LTD.	Vadodara SE
154	SAURASHTRA CALCINE BAUXITE & ALLIED IND.	Vadodara SE
155	SAVIN ELECTRONICS LTD.	Vadodara SE
156	SHREE VIJAY INDUSTRIES LTD.	Vadodara SE
157	SHREYANS LEASING & FINANCE LTD.	Vadodara SE
158	SHRI I JEE CEMENTS LTD.	Vadodara SE
159	SHUKRA DIAMOND (EXPORTS)LTD.	Vadodara SE
160	SIMANDHAR FINANCE LTD.	Vadodara SE
161	SRI KRISHNA DRUGS LTD.	Vadodara SE
162	SUDEV CHEMICALS LTD.	Vadodara SE
163	SUPERSTAR WELDING IND LTD.	Vadodara SE
164	SUSHIL PACKAGINGS (INDIA)LTD.	Vadodara SE
165	SWARSHILP PROPERTIES LTD.	Vadodara SE
166	TAPURIAH STEELS LTD.	Vadodara SE
167	TELNET INFOWAY LTD	Vadodara SE
168	TIRUPATI SHELTERS LTD.	Vadodara SE
169	TOPLINE SHOES LTD.	Vadodara SE
170	TOSHVIN IND.LTD.	Vadodara SE
171	UNITY STEEL LTD.	Vadodara SE
172	VINAY CHEM PHARMA LTD.	Vadodara SE
173	WESTERN ORISSA SUGAR LTD.	Vadodara SE
174	YOGIWARE FABRICS LTD.	Vadodara SE
175	ZEL JEWELLERS LTD.	Vadodara SE
176	ZEN SHAVING LTD.	Vadodara SE
177	ZILLON MEDICARE (EXPORT) LTD.	Vadodara SE



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12.06.2019

**Bank frauds worth ₹2.05 trillion happened in last 11 years, reveals RBI data**

- Over 50,000 frauds had hit banks in India FY09-FY19, RBI said in a response to an RTI query
- ICICI Bank reported the highest number of frauds (6,811) involving ₹5,033 crore

## Topics

Bank Fraud

**New Delhi:** Of over 50,000 frauds that hit banks in India in the last 11 fiscal years, the ICICI Bank, State Bank of India (SBI) and HDFC Bank reported highest number of cases, according to an RBI data.

Of the total 53,334 cases of frauds reported during 2008-09 and 2018-19 fiscal years, involving a whopping ₹2.05 lakh crore, a highest of 6,811 were reported by the ICICI Bank involving ₹5,033.81 crore.

The state-run State Bank of India (SBI) reported 6,793 fraud cases involving ₹23,734.74 crore followed by HDFC Banks which recorded 2,497 such cases involving ₹1,200.79 crore, according to the data given by the central bank in response to an RTI query filed by this correspondent.

The Bank of Baroda reported 2,160 fraud cases (involving ₹12,962.96 crore), Punjab National Bank 2,047 frauds



( ₹28,700.74 crore) and Axis Bank had 1,944 fraud cases involving RS 5,301.69 crore public money.

As many as 1,872 frauds involving ₹12,358.2 crore was reported by Bank of India, 1,783 by Syndicate Bank ( ₹5830.85 crore) and Central Bank of India's 1, 613 cases involving ₹9041.98 crore, the data shows.

IDBI Bank Ltd reported 1,264 fraud cases involving ₹5978.96 crore, Standard Chartered Bank 1,263 cases involving ₹1221.41 crore, Canara Bank 1,254 cases of ₹5553.38 crore, Union Bank of India 1,244 frauds of ₹11,830.74 crore and Kotak Mahindra 1,213 cases involving ₹430.46 crore.

In that period, Indian Overseas Bank reported 1,115 frauds involving ₹12,644.7 crore, while Oriental Bank of Commerce 1040 cases of ₹5,598.23 crore.

The United Bank of India reported 944 cases of frauds involving ₹3052.34 crore, State Bank of Mysore 395 cases of ₹742.31 crore, State Bank of Patiala 386 cases ( ₹1178.77 crore), Punjab and Sind Bank 276 cases ( ₹1154.89 crore), UCO Bank 1081 frauds ( ₹7104.77 crore), Tamilnad Mercantile Bank Ltd 261 cases ( ₹493.92 crore) and Lakshmi Vilas Bank Ltd reported 259 frauds ( ₹862.64 crore).Some of the foreign banks operating in India also reported fraud cases worth crores during the last 11 fiscal years.

American Express Banking Corporation reported 1,862 fraud cases of ₹86.21 crore, Citi Bank 1,764 cases of ₹578.09 crore, Hongkong and Shanghai Banking Corporation (HSBC) Ltd 1,173 frauds of ₹312.1 crore and The Royal Bank of Scotland Plc reported 216 frauds involving ₹12.69 crore, the RBI data said.

A total of 274 cases of frauds were reported by the State Bank of Travancore involving ₹694.61 crore, Jammu and Kashmir Bank Ltd reported 142 such cases of ₹1639.9 crore, The Industrial Finance Corp of India had nine cases of ₹671.66 crore, The Dhanlakshmi Bank Ltd 89 cases of ₹410.93 crore and Vijaya Bank reported 639 cases involving ₹1,748.9 crore, it said.

Yes Bank Ltd reported 102 fraud cases involving ₹311.96 crore and Paytm Payments Bank Limited reported two cases of ₹0.02 crore (or ₹2 lakh), it said.

PTI had on June 3 reported that as many as 6,801 cases of fraud were reported by scheduled commercial banks and select financial institutions involving an amount of ₹71,542.93 crore in the last fiscal, quoting data from the RBI.

After the story was published, the Congress party held a press conference the next day and demanded that the BJP government issue a "White Paper" on rising bank frauds in the country.

During 2008-09, a total of 4,372 cases were reported involving an amount of ₹1,860.09 crore. In 2009-10, ₹1,998.94 crore worth fraud was reported in 4,669 cases.

A total of 4,534 and 4,093 such cases were reported in 2010-11 and 2011-12 involving ₹3,815.76 crore and ₹4,501.15 crore, respectively.

In the 2012-13 fiscal, 4,235 fraud cases involving ₹8,590.86 crore were reported by banks as against 4,306 cases (involving ₹10,170.81 crore) in 2013-14 and 4,639 cases (involving ₹19,455.07 crore) in 2014-15.

As many as 4,693 and 5,076 cases of fraud were reported in 2015-16 and 2016-17 involving ₹18,698.82 crore and ₹23,933.85 crore, respectively, it said.

A total of 5,916 such cases were reported by banks in 2017-18 involving ₹41,167.03 crore.

*This story has been published from a wire agency feed without modifications to the text. Only the headline has been changed.*

<https://www.livemint.com/industry/banking/bank-frauds-worth-rs-2-05-trillion-happened-in-last-11-years-reveals-rbi-data-1560335835680.html>

A handwritten signature in blue ink, appearing to read 'from ab/falca', is placed over a grey rectangular background.

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**The Economic Times****30.08.2019**

Rs 71,500 crore worth of bank frauds detected in FY19: RBI report.

Indian banking system detected Rs 71,500 crore worth of frauds in financial year 2018-19 which to put in scale is slightly more than the Rs 71,000 crore recapitalisation package planned by the government to revive the health of its public-sector banks.

Interestingly, over 90 percent of these losses were to the government owned banks while the share of incidents that emanated from these lenders was at 55.4 percent.

Overall, 3,766 incidents of frauds were detected in FY19, a 15 percent spike from a year ago, while the losses incurred saw an 80 percent rise from the last year, even as FY18 saw the most infamous banking fraud in India's history where Nirav Modi siphoned off nearly Rs 13,000 crores from Punjab National Bank in February 2018.

“In terms of area of operations, frauds related to advances constituted the preponderant share of the total amount involved in frauds in 2018-19, while the share of frauds in off-balance sheet items declined from a year ago,” according to RBI's annual report released on Thursday. “Frauds relating to card/internet and deposits constituted only 0.3 per cent of the total value of frauds in 2018-19.”

Most of these frauds were because cheating and forgery, followed by misappropriation & criminal breach of trust, RBI said. Small frauds less than Rs.1 lakh were just 0.1 percent of the amounts involved.

Another point of concern for regulators and policymakers came from the fact that it took banks an average of nearly 2 years to detect frauds. Large frauds above Rs.100 crore took banks nearly four and a half years to detect, RBI said. Nearly Rs 52,000 crore worth of frauds detected were classified as big frauds.

To curb this menace, the central bank said that it is in talks with various agencies including the Ministry of Corporate Affairs to create an interlinked database for fraud monitoring. In furtherance, the regulators said that analytic engines of banks and user interface of fraud registry would be improved to create a more robust monitoring system.

The RBI, in the report, said that they also subjected 57 banks through IT examination to check their cyber security preparedness and compliances.

“Targeted thematic examinations were also carried out, focusing on applications, infrastructure and systems used by the banks.”

Article link:

<https://economictimes.indiatimes.com/news/economy/finance/bank-fraud-touches-rs-71543-crore-in-2018-19-rbi-annual-report/articleshow/70895326.cms>



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## ANNEXURE P- 15

**The Relevant Extracts of Annual Report 2018-2019 of****Ministry of Corporate Affairs**

(iv) in the public interest, then it may appoint one or more persons as Inspectors for carrying out investigation under Section 210. Usually, Inspectors appointed by Central Government under Section 210 for carrying out the investigation are drawn from amongst the officers posted in the Offices of Regional Directors ( except when assigned to SFIO).

**Serious Fraud Investigation Office.**

6.5.1 The SFIO may be asked to investigate under Section 210 of the Act, incases characterized by: (i) Complexity, and having inter-departmental and multi-disiplinary ramifications;

(ii) Substantial involvement of public interest to be judged by size, either in terms of monetary misappropriation, or in terms of the persons affected; and

(iii) Possibility of investigations leading to, or contributing towards, a clear improvement in systems, laws or procedures.

6.5.2 During the financial year from 1st April, 2018 to 31<sup>st</sup>March, 2019, the SFIO has submitted the 12 investigation report to MCA involving 83 companies. A total number of 37 prosecutions cases filed in various designated courts related to Company Law /IPC, NCLT and ICAI/ICSI.

6.5.3 The Central Government ordered investigation into the affairs of 122 of Companies and LLPs during the year 2018-19 through RoC/RDs Offices and Inspection reports are 57 in numbers. The Inspection Reports in case of 138 Companies /LLPs were under progress as on 31st March, 2019.

**Prosecutions**

6.6.1 On the basis of investigation reports (by SFIO and the Regional Directors), the Ministry takes action in suitable cases. The action takes the form of prosecutions filed under the Indian Penal Code, cases filed before the Company Law Board (now NCLT) and disciplinary proceedings by the Institute of Chartered Accountants of India. As per Section 439 of the Act, the court will take cognizance of the offence only upon a complaint by either (i) Registrars of Companies, or (ii) any shareholder of the company, or (iii) a person authorized by the Central Government, or (iv) Securities and Exchange Board of India, in respect of listed companies relating to issue and transfer of securities and non-payment of dividend.

6.6.2. As on 1st April, 2018, 44,278 cases of prosecution were pending in various courts which were launched under the Act, 2013 and Companies Act, 1956. During the financial year 2018-19, 2,573 new cases of prosecution were launched.

6.6.3 As on 31st March, 2019, 33,965 prosecutions were pending in various courts. ROC-wise summary of prosecutions and their disposal are given in the Statement-XI (Appendix).

6.6.4 The details of nature of defaults and the number of cases of prosecution launched in 2018-19 under the Companies Act, 1956 and the Companies Act, 2013 respectively are given in Table 6.3(A) and Table 6.3(B) below:



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## ANNEXURE-P-16

**THE RELEVANT EXTRACTS OF ANNUAL REPORTS OF 2018-2019  
OF MINISTRY OF CORPORATE AFFAIRS**

Sl.No.	Sections	NatureofDefaults	Numb rof Cases
23	128	Books of account etc. to be keptbycompany	27
24	129	Non furnishing true and fair value in thefinancial statement	215
25	133	profit for the year and balance of profit and Lossaccountis overstated	1
26	134	Financial statements andboardreports	70
27	135	CorporateSocialResponsibility	19
28	137	Non-filing offinancialstatement	303
29	138	Internalaudit	3
30	139	Appointmentofauditors	5
31	143	DutiesofAuditors	16
32	146	Auditors to attendgeneralmeeting	5
33	147	Incorrect or Misleading reportbyAuditors	18
34	148	Non filing of CostAuditReports	60
35	149	Company to have boardofdirectors	2
36	152	Appointmentofdirectors	2
37	153	Non furnishing ofDINNo.	1
38	158	Failure to quote din & other particularsofdirectors	5
39	159	Punishmentforcontravention.	2
40	165	Directorsholdingdirectorshipinmorethanthresholdlimits	75
41	167	Vacation of officeofdirector	1
42	168	Resignationofdirector	1
43	170	Register of directors and key managerial personnellandtheir shareholding	2
44	172	Limit of No. ofDirectors	7
45	173	Boardmeeting	5



SI.No.	Sections	Nature of Defaults	Number of Cases
(1)	(2)	(3)	(4)
46	178	Constitution of Nomination and Remuneration Committee	19
47	179	Powers of board	3
48	182	Prohibition and restrictions regarding political contributions	3
49	184	Non -disclosures of Directors Interest	2
50	185	Loan to directors	3
51	186	Loan and Investment by Company	3
52	187	Investments of company to be held in its own name.	5
53	188	Related party transactions	6
54	196	Appointment of MD, WTD or Manager	2
55	197	Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits	4
56	203	Appointment of key managerial personnel	14
57	204	Secretarial audit for bigger companies	3
58	206	Power to call for information, inspect books and conduct inquiries	132
59	207	Conduct of inspection and inquiry	81
60	217	Procedure, Powers, etc. of Inspectors	1
61	301	Arrest person trying to leave India	3
62	447	Punishment for fraud	18
63	448	Punishment for False Statement	37
64	450	Punishment where no specific penalty or punishment is provided.	25
65	454	Nonpayment of adjudication penalty	59
66	108 r/w rule 20&30of Companies (Management & Administration) Rules, 2014	Non-Compliance of Section 108	1

SI.No.	Sections	Nature of Defaults	Number of Cases
(1)	(2)	(3)	(4)

67	125	Not filed forms for creation, modification and satisfaction of charge	1
68	383A,203	Appointment of KMP/Service on foreign company	1
69	Rule 16 of Deposit Rules	Non filing of Form DPT-3	2
70	Rule 21 of Companies Acceptance of Deposit) Rule, 2014	Non filing of acceptance of deposit	32
71	Rule 24 of Nidhi Rules	S.T.707/2018 - Filed under Rule 24 of Nidhi Rules 2014 r.w. S.406 &469 of CA 2013 for violation of Rule 6(J) and Rule 10 (1) of Nidhi Rules	2
72	S403/418 IPC	Dishonest misappropriation and cheating	1
<b>Total</b>			<b>1,778</b>

**6.6.5** The Progress of prosecutions during the last three years from 2015-16 to 2018-19 is indicated in **Table 6.4**:

**Table 6.4.**  
**Progress of Prosecution during the last three Years**

SL No.	Subject	2016-17	2017-18	2018-19
	(2)	(3)	(4)	(5)
1	Number of companies prosecuted during the year	2,308	1,764	958
2	Number of prosecutions started during the year	4,522	3,972	2,573
3	Number of prosecutions pending at the beginning of the year	46,979	48,987	44,278
4	Number of prosecutions disposed during the year	2,513	8,681	12,886



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## ANNEXURE P-17

Date: 13.07.2020

To,

1. The Secretary,  
Ministry of Corporate Affairs,  
Shastri Bhawan,  
Rajendra Prasad Road,  
New Delhi - 110001.
  
2. Ministry of Law and Justice,  
(Through Its Secretary)  
Shastri Bhawan,  
Rajendra Prasad Road,  
New Delhi - 110001.
  
3. The Institute of Company Secretaries of India,  
22, ICSI House, Lodhi Road,  
Institutional Area, Lodhi Colony,  
New Delhi – 110003.

Sub: Representation for reviewing the enhancement of Paid-Up Capital from Rs. 5 Crores to Rs. 10 Crores for hiring of the Company Secretaries and seeking for withdrawal of notification of the Ministry of Corporate Affairs 03.01.2020, which is effective from 01.04.2020 and continue with the Old Rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 and for review of any exemptions to the companies on the basis of size or the paid-up capital compromising corporate governance and ensuring the governance irrespective of the size of the company and request to develop a robust corporate governance mechanism to ensure the effective governance of the corporate entities in the interest of the common people, Company Secretaries Profession and in the interest of the Nation.

Dear Sir(s),

1. That the present representation is being filed by the applicant who is fellow member of Institute of Company Secretaries of India (ICSI) an apex statutory body for Corporate Governance and he is also an activist and working for social causes and betterment of education beside his lively hood. This representation have been filed in the capacity of citizen of this country drawing the immediate attention of the above mentioned addresses towards the serious compromise with Corporate Governance, due diligence and compliances impacting the economic growth of this country, interest of all the stake holders connected with corporate including banks, financial institutions and common people of this country who deals with them and for taking the corrective actions thereof.
2. Further, the instant representation have been preferred to challenge the constitutional validity of the notification dated 03.01.2020 amending Rule 8A of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 (“RULES”) w.e.f. 01.04.2020 whereby the financial limits (paid up- capital) for engagement of whole time Company Secretary (“C.S.”) has been enhanced from the Rs. 5 Crores to Rs. 10 Crores, immediate stay thereof, and continuance of Old Rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 which was notified on 09.06.2014 and further for withdrawal of the above said notification dated 03.01.2020 by the Ministry of Corporate Affairs and further to take urgent corrective measures against the

serious compromise noticed in the corporate India with the Corporate Governance, compliances, due diligences. Before discussing the relief and the directions thereof, the kind attention of the above addresses have been drawn on the following issues for your kind consideration:

- i. That as per the annual report of MCA (Ministry of Corporate Affairs) out of total 18,73,044 companies, 6,70,018 companies were closed [35.77% (more than one third) of the total companies] due to non compliances/ serious governance issues and only 11,56,374 companies were ACTIVE companies as on 31.03.2019. Here the attention of your good self is drawn on the fact that inspite of the stringent provisions of the Companies Act, 1956 and also and also the Companies Act, 2013 and the various remedies of compounding of offences announced by the Ministry from time to time how such pathetic conditions has continued in Corporate India which has laid to closure of the companies. The attention is also drawn towards the fact that why the timely actions have not been taken at the beginning of the non compliances. Therefore, the present representation seeks the immediate attentions for corrective measures and non representations of such situation in future.
- ii. Further, there were 33 Lakhs DINs (Director Identification Number) in the registry and around 15.88 Lakhs DIN holders have filed DIR KYC as on 30.11.2018 (48.121% Directors remained non complied inviting questions on their sanctity, existence, and traceability). Non- availability/ non-

compliance by the Directors is also a very serious concern in the light of above said percentage to ensure Corporate Governance.

- iii. Further, the attention of your good self is drawn towards this fact that approx. one third of the Corporate India remain in non complied zone for number of years resulted the Government has decided to close approx. one third of the total registered companies as discussed above. The non filing of Annual Accounts and Annual Returns remains a serious question mark and even in presence of Ministry of Corporate Affairs, ROC's, ICSI and other statutory institutions required attention and immediate corrective measures by your good self. Further, inspite of the closure of approx. One Third of the Companies of the Corporate India, still in FY 2018-19 approx. 15,000 companies have not filed their balance sheet and more than 50,000 companies have not filed annual return. The existence and the operations of these companies required to be checked and genuine reason thereof else necessary actions may be required.

Sl. No.	Financial Year	No. of Active Companies	Non filing of Annual Accounts (% out of Total Active Companies)	Non filing of Annual Returns (% out of Total Active Companies)
1.	2013-14	9,52,433	30.62%	30.38%
2.	2014-15	10,22,011	24.55%	25.10%
3.	2015-16	10,88,780	37.91%	40.05%
4.	2016-17	11,69,303	27.22%	30.04%
5.	2017-18	11,67,858	18.73%	19.69%
6.	2018-19	11,56,374	1.36%	4.39%

- iv. Not only this, the listed entities which have collected

the funds from the initial public offering (IPO) and further public offer has also got vanished which is highly detrimental to the economic growth of this country and is great loss to the common investor. As per the answer place before Hon'ble Rajya Sabha dated 13.03.2018, it has been stated that “the Coordination and Monitoring Committee (CMC) has been constituted for those listed entities which has vanished after public issue during the year 1992-2005. Out of 238 listed companies identified as Vanishing Companies due to the efforts of the Ministry and Law Enforcement Agencies 161 such companies have been traced and 77 more companies are still in the list of Vanishing Companies. That this fact puts a serious question mark on Corporate Governance and the corrective measures are required to avoid such circumstances.

- v. That as per the information available in the public domain, list of the companies referred to as Vanishing Companies as on 31.03.2019 which were listed on Bombay Stock Exchange (BSE) goes to 177. That it invites the attention and the serious lapses in Corporate Governance and actions thereof.
- vi. That as per one case study on white collar crime available on public domain (International Journal of Engineering Development and Research) “One of the major havoc that is created in present times is because of mysterious disappearances of corporations. Of the 5651 companies listed in the Bombay Stock Exchange. 2750 have vanished. It means that one out

of two companies that comes to the stock exchange to raise Crores of rupees from investors' loot runaway. About 11 million investors have invested Rs 10,000 Crores in these 2750 companies. We have Securities & Exchange Board of India, Reserve Bank of India and Department of Companies Affairs to monitor the stock exchange transactions but none has documented the whereabouts of these 2750 odd companies suspended from the stock exchange." This fact reflects immediate cognizance should be taken on the issue of Corporate Governance.

- vii. That as per the report of Live Mint dated 12.06.2019 "Bank frauds worth Rs2.05 Trillion happened in last 11 years, reveals RBI data". Over 50 thousand frauds hit banks in India FY09-FY19, RBI said in response to an RTI query by them. It reflects serious lapses in Corporate Governance by the concerned entities and required the indulgence of your good self to avoid any such circumstances.
- viii. That as per one report, ET BUREAU dated 30.08.2019 available in the public domain "Indian Banking System detected Rs 71,500 Crores worth of frauds in FY2018-19 which to put in scale each slightly more than the Rs 71,000 Crores recapitalization package planned by the Government to revive the health of its public sector bank. As per the report of the Press Trust of India dated 04.06.2019 " Reserve Bank of India in an RTI reply has disclosed that over 6800 cases of bank frauds involving an unprecedented Rs71,500 Crores were reported in FY



2018-19 as against a total of 5,916 such cases in FY2017-18 involving Rs 41,167.03 Crores. It reflects serious lapses by the concerned corporate entities and required working on the data bases of such companies and remedial actions thereof.

- ix. Further there are a lot of critical compliances are based on paid up capital, turnover, net worth and loans and borrowings of the corporate however, no such data or informations are available anywhere in public domain or either in the Annual Report of Ministry of Corporate Affairs or of the ICSI and hence, these informations of the Corporate India should be captured in the monthly report. It is also an humble prayer to the Secretary of the Ministry of the Corporate Affairs that the details of the non compliances and the status thereof should also be captures in the monthly bulletins of the Ministry of Corporate Affairs.
- x. It is also shocking that as per the data base of the Annual Report of the Ministry of Corporate Affairs in last five years from FY 2013 TO FY 2017-18 more than one third companies of India have failed in filing the Annual Returns and even Annual Accounts thereof. However, the total prosecution for non filing of Annual Returns under the Companies Act, 2013 and The Companies Act, 1956 comes to 403 however, even we take the non filing of Annual Return of 2017-18 it is 2,29,984 hence the percentage of prosecution comes to 0.17%. That similarly total prosecution filed on April, 2018 to March, 2019 was 632. Even if we

take FY2017-18 approx 2,18,738 companies have not filed their Annual Accounts and if we convert the prosecution into the percentage it comes to 0.28% only.

- xi. It is also shocking that as per the Annual Report of the Ministry of Corporate Affairs there is total pending prosecutions across the Country is 33,965 against 21,373 companies however, we have noticed that 6,21,966 companies have been declared defunct/struck off by the ROC, even if we consider it as a severely non-compliant companies and actions have been taken on only 21,373 companies in the past it comes around 3.43% only and there is no disclosure of other actions.
- xii. That the Ministry of Corporate Affairs and its Annual Reports are completely silent on compliance, non-compliance and the action thereof and also the ICSI being the apex body in the Corporate Governance have never bothered to analyze and suggest requisite action to the Ministry of Corporate Affairs.
- xiii. The clear provisions of whole time appointments of the Company Secretaries remains since 1975 however, the applicant has noticed wondering the members for the employment and it have been non-compliant by several companies in the last twenty years. Neither the ICSI nor the Ministry of Corporate Affairs have disclosed any information in the public domain for the compliance or the non-compliance of such provisions which is highly detrimental and serious compromise with the Corporate Governance in spite of

the clear intents and specific provisions engrafted by the legislatures. That the applicant has noticed that there is only 29 cases of prosecutions of non hiring of KMP's or Company Secretaries and no actions have been taken inspite of the facts that the above said provisions remains non complied for a long time. That the ICSI has also failed in ensuring the compliances of the said provisions and the compliance thereof hence, the kind attention of your good self is drawn for the necessary measures.

- xiv. That such a serious compromise with the Corporate Governance besides being detrimental to the public at large has also affected the revenue receipt of the Ministry of Corporate Affairs and the effective Corporate Governance can create more employment opportunities and the work for the professionals rather than making free of the defaulters or the violators of Law. That there is a great possibility of high revenues to the Government by the compounding of offences, penalties, fines etc and engagement of the professionals and deterrent message to the offenders. No need to mention that in approx. most of the white collar crimes of this country the offender have misused the several corporate entities being behind the screen and further neither the companies nor the directors are being traced and ultimately they are mostly remain unpunished and great loss to the economy and the common people and the investors.
- xv. There were more than 18,73,044 companies in India and after closure we have 11,56,374 active companies

as on 31.03.2019. Further, it has been noticed that there is no concept of random checks on the Corporate Governance or suo moto inspections, visits of different corporate even sample check. This also invites the attention of your good self for remedial actions thereof.

- xvi. That it also hereby submitted that more than 90,000 companies are being incorporated per year and the ICSI is making approx. 4000 to 5000 members in a year. The concept of company secretaries originated from the parliamentary discussion of the Companies Act, 1956 and recognized by the legal provisions in the year 1975 and in the year 1980 the ICSI has come, however approx. 40 years has gone and the ICSI has failed in making the more members for better service of the Corporate India. Further, with respect to time, no campus or sufficient infrastructure has been developed to add more students and adding more members. The ICSI has failed in maintaining the transparency that out of their total members how many members are in employment, in practice and how many members have opted other profession inspite of getting the membership of the ICSI. Further, there should be the clear provisions of surrendering the membership and the necessary directions thereof if any member have opted some other professions. That the ICSI has also not presented the data in its annual report or on its website that how many company secretaries are required in the country, how many companies have complied it and how many companies

have not complied it and if not complied what actions have been taken against them. If the legislature has framed any law it should be duly complied.

- xvii. Further, no exemptions should be granted to any companies of this country on the ground of size, paid-UP capital and the corporate governance should be ensured irrespective of paid- up capital , turnover and net worth. Therefore, the classification under the Companies Act and the rules thereof notified by the Ministry of the Corporate Affairs by granting the exemptions from hiring of the company secretaries in the basis of paid- up capital under Section 203 and relevant rules 8 AND 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 and further the exemptions from certification by the company secretaries under Section 92 of the Companies Act, 2013 should be withdrawn.
- xviii. Further, the mechanism for ensuring robust corporate governance should be developed irrespective of size and other criteria. Further it also submitted that the possibilities of involvement remain more of small companies in white collar crimes and there should be no exemptions to them in the light of the track records of the historical lapses in compliances of the Law of the Land.

❖ SUMMARY OF RELIEFS SOUGHT FOR :

Therefore, in the light of the above it is crystal clear that there should not be any compromise with the Corporate Governance, compliances and due diligences irrespective

of size of the company. That 2,34,371 companies have been got defunct/struck off during the financial year 2017 – 18 and similarly 1,38,446 companies during the year 2018-19. The question of serious lapses in the Corporate Governance remains against these companies and their directors. That the Ministry have issued the various schemes in the past for compounding/ resolving of the various non compliances and their remains the concept of declaring the company as a dormant company or get it strike off automatically with the help of the ROC or to voluntarily liquidate the company. However, the concerned officials of these companies have not opted for legal course of action for the closure of the company. These companies were either fake, fabricated, have been created for malicious intent or objectives and no effective actions have been taken against them. It have been noticed that various companies remains the part of the white collar crimes or have been utilized for malicious, illegal economic activities. The striking of the company or declaring a defunct without any action gives very bad message to the public at large. In the light of the above facts there should be more responsibilities towards the ensuring the Corporate Governance on Ministry of Corporate Affairs and also upon the Institute of Companies Secretaries of India. Further all the companies the of the Corporate India should ensure the Corporate Governance under the supervision of the Ministry of Corporate affairs and the bigger role for the members of the Institute of Companies Secretaries of India to avoid such circumstances and effective actions thereof. Further

recently the Ministry of Corporate Affairs have issued the notification dated 03.01.2020 effective from 01.04.2020 should be immediately stayed which is detrimental to the Corporate Governance.

Therefore, this representation has been made for drawing the attention of the above addresses towards the following relief:

- (i) To set aside the Notification dated 03.01.2020 of Ministry of Corporate Affairs i.e. Rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 “8A. Every private company which has a paid up share capital of ten Crores or more shall have a whole – time company Secretary.” (Consequently overall impact and meaning thereby no appointment of Company Secretary is mandatory if the paid up capital of any company is less than Rs 10 Crores).
- (ii) That the Ministry of Corporate Affairs should continue with Rule 8A with earlier which was inserted with effect from 09.06.2014 as under “Rule 8A - Appointment of Companies Secretaries in Companies not covered Under Rule 8—A company other than a company covered under Rule 8 which has a paid up capital of five crore rupees or, one shall have a whole time company secretary (Consequently meaning thereby all the companies whose paid up capital are above 5 Crores should hire a Whole Time Company Secretary as usual since 2009.)

(iii) That the Ministry of Corporate Affairs should make further rules for hiring of Wholetime Company Secretary for better Corporate Governance as under:.

➤ “Every company which has:

- a. Net worth of one hundred crores rupees or more; or
- b. Outstanding loans or borrowings from banks or public financial institutions of one hundred crores rupees or more; or
- c. Turnover of one hundred crores crore rupees or more shall have a Whole Time Company Secretary.

Explanation:- For the purpose of this rule, the paid up share capital, net worth, outstanding loans or borrowings or turnover as the case may be existing on the last date of latest audited financial statement may be taken into account.

(iv) Further, the Ministry of Corporate Affairs should make the rules for compliance certification of all the ACTIVE companies whatever be the size, paid up capital, turnover or net worth of the company, where there is no Wholetime Company Secretary or Secretarial Auditor and to ensure better Corporate Governance.

(v) Further, the Ministry of Corporate Affairs should issue directions for the Permanent Secretarial Auditor like Statutory Auditor in the prescribed company for five years.

(vi) The direction to the Institute of Company Secretaries of India for maintaining the clear data base of the company secretaries who are in



employment or practice or in some other profession and to keep close watch on number of company secretaries required in the market and number of available members with close coordination with ministry and the same should be disclosed regularly in its annual report. The ICSI should also address the summary of the compliances, database by Corporate India and specific compliance of provisions of appointment of Company Secretaries and the data thereof in its Annual Report.

- (vii) The direction should be issued to ICSI being the apex body in the Corporate Governance and also to the Ministry of Corporate Affairs on making the regular disclosure pertaining to number of companies with respect to turnover, net worth, paid up capital, loans and borrowings in its annual report. The Ministry should also regularly disclose the total number of non compliances noticed during the year and action taken report thereof in its annual report.
- (viii) That the directions should be issued to take the requisite actions against the defaulters who have continuously non complied the different provisions of The Companies Act, 2013 or The Companies Act, 1956 in the past and to review the entire issues and disclosure of the same in its Annual Report including specific compliance of hiring of company secretaries, secretarial auditors and certifications thereof.
- (ix) To develop robust corporate governance mechanism to ensure the governance of the corporate entities.

❖ BACKGROUND OF RECENT AMENDMENTS VIDE NOTIFICATION DATED 03.01.2020 EFFECTIVE FROM 01.04.2020.

The MCA have taken the initiative to weed out inactive companies and disqualified directors, protect the public money, overcome the financial irregularities and increase the effectiveness of the governance mechanism. India is perhaps the only country where a form like INC-22A (ACTIVE) is introduced. The MCA has notified form no. INC-22A- ACTIVE (Active Company Tagging Identities and Verification) and have asked for all substantial details ensuring whereabouts of the company, its management, Company Secretaries, Auditors etc. and have asked for email id with OTP confirmation, Photographs of registered office with directors/ KMP with longitude and latitude, complete whereabouts of all directors, complete details of statutory auditors, complete details of cost auditors, complete details of Managing Directors or CEO or Managers or Whole Time Directors, Company Secretary if applicable, CFO, details of filing of balance sheets, Annual return for the financial year 2017-18 duly signed by stated officials and along with their certifications. It was also stated that, if the company does not intimate the said particulars, the company shall be marked as “ACTIVE- non-compliant” on or after 26<sup>th</sup> April, 2019 and shall be liable for action under Sub-section (9) of section 12 of the Act:

Provided also that no request for recording the following event based information or changes shall be accepted by the Registrar from such companies marked as “ACTIVE

non-compliant”, unless “e-Form ACTIVE” is filed.

As the above said initiatives of the Ministry have left no place for the violators and non-compliances they have created a cartel and started raising the concern for non-availability of the company secretaries or the costing or the various false and frivolous issues and have created a cartel to evade from the express provision of law for appointment of company secretaries and also to evade from providing the other substantial details to be provided to the MCA in the name of non-availability of the company secretaries making it as a MOHRA for continued non-compliances, not only this some of the professionals have raised this issue wrongly on the basis of professional biasness

Here it should be noted that there were 35,158 Company Secretaries in India as on 31<sup>st</sup> March, 2014 and there were approx. 27,785 companies above the paid-up capital of Rs 5 Crores or more. There was no issue of less number of company secretaries in the market in the past rather the members have faced difficulties in getting the job due to the evading attitudes of this important provisions of hiring of company secretaries in the past. Further, neither any annual report of the MCA nor the Annual report or the media or any such information were available in the public domain at any time as per the knowledge of the applicant. Here it should be noted that the applicant have carefully gone through the various annual reports of the ICSI and MCA since year ending with 31<sup>st</sup> March, 2013. From the above said report it is ambit clear that there was no issue pertaining to less number of company secretaries

in the market.

The Companies Act, 2013 has replaced the Companies Act, 1956 with the core objective of self governance, great transparency and being more stringent towards the violation of the provisions of the enactment. Since, 2009 all the companies having the paid up capital of Rs 5 Crores or more, it was mandatory for them to hire the company secretary for ensuring the compliances of the Companies Act and other enactments and watch the interest of the investors, company and other stake holders. As per the report dated 01.01.2015, data dated 31.12.2014, there were 11,532 companies holding the total paid up capital of Rs 83,376.46 Crores. The above said amendment is not only serious compromise with the Corporate Governance of those companies rather also impacts the employment and livelihood of more than 11 thousand company secretaries across the country and more than 4 Lakhs students across the country preparing for being the members of the ICSI.

The amendment is arbitrary being passed without ascertaining any need, cause of action and without application of mind, ignoring the representations sent by the Statuary body i.e. Institute of Companies Secretary (“I.C.S.I.”).

Rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014

OLD RULE w.e.f. 31.03.2014	NEW RULE w.e.f. 01.04.2020
A company other than a company	Every private company

<p>covered under Rule 8 which has a paid-up capital of <u>five Crore</u> rupees or more, shall have a whole-time company secretary. (notified on 09.06.2014) [Since, 2009 as per the provisions of Companies Act, 1956 all the companies having the paid up capital of Rs 5 Crores or more were mandatory required to hire Whole Time Company Secretary.]</p>	<p>which has a paid-up share capital of <u>ten Crore</u> rupees or more shall have a whole – time company Secretary. [As per this amendment effective from which was notified on 03.01.2020 effective from 01.04.2020 , there is no requirement of having the Company Secretary for the companies having the paid up capital less than Rs 10 Crores. As on 31.03.2014, approx. 11, 532 companies are falling within the bracket of Rs 5 Cores to Rs 10 Crores.</p>
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That applicant raises an objection for enhancement of financial limit for engaging Company Secretary from Rs 5 crore to Rs 10 crore being the serious compromise with the Corporate Governance.

It should also be noted that the said appointment of the company secretaries was fully effective from 09<sup>th</sup> June, 2014 vide Rule 8 and 8A, of Companies (Appointment and Remuneration Of Managerial Personnel) Rules. 2014 and Section 203 of Companies Act, 2013 was effective since beginning and Rule 8A was also notified with effect from 09<sup>th</sup> June, 2014. But none of the corporate across the country has raised any issues as such and the habitual violator has opted for

non complying the same and have never raised this issue at any time in the past and have non-complied the expressed provisions during the financial year 2015-16, 2016-17, 2017-18 and 2018-19.

That the applicant has analyzed the emails forwarded by the different corporate entities and their agents to the Ministry OF Corporate Affairs which was forwarded to the ICSI and the ICSI has already addressed all the queries. It was during the analysis it was noticed that out of 34 grievances forwarded to the MCA only 10 were relating to non availability of Company Secretaries with the ulterior motives to avoid compliances and these entities were not complying this provision for appointment of company secretaries from the long time. The said analysis is presented herewith in tabular mode for your kind consideration which reflects that the said enhancement is arbitrary in nature and need to be reviewed.

Sl. No.	Name of the Company/ Stakeholders	Remarks of the Applicant
1.	Chartered Accountant A. John Morris, Chennai. Letter Dated 09.04.2019.	No Merit. Chartered Accountant firm- The issue raised with professional biasness.
2.	G V K Power & Infrastructure Ltd. Letter dated 04.04.2019	The company has already company secretary since 01.10.2005 namely Mr. Puni Venkata Rama Seshu (PAN- ACUPP3819Q). Hence the grievances raised with malicious intents without being the interested party and is a big corporate house as it reflects from assets and charges as per the master data of MCA.

3.	Blue Berry Agro Products Pvt. Ltd. , Mumbai.	As per the master data and information collected from the website it's a big company but violating the express provision of law since 2014.
4.	Local Circle - Social Media Platform for Start Up.	Grievances pertain to other issues.
5.	A.P. Towers Ltd., Andhra Pradesh.	It is a PSU. The issue were raised for no attracting the company secretaries in view of scales of pay. Hence, not relates to non availability of company secretaries. Institute has suggested fresher company secretaries and also to take the help of the placement cell of ICSI. Hence, no merit in the grievances.
6.	Andhra Pradesh State Fiber Net Ltd.	It also a PSU and has raised other issue not connected with company secretaries and have raised only the point of no able to attract company secretaries in view of low pay scales. Institute has suggested fresher company secretaries and also to take the help of the placement cell of ICSI. Hence, no merit in the grievances.
7.	Tamilnadu Spinning Mills Association, Dindigul, Chennai.	Have not mentioned the name of any company and have simply asked for exemption from filing of INC-22A ACTIVE stating that companies are not able to find the suitable candidate possessing the

		requisite qualification as company secretaries. ICSI has offered the services of placement cell if there is nay such instances.
8.	South India Importers Association, Chennai.	Have not mentioned the name of any company and have simply asked for exemptions of the private company stating the reason that most of the private companies are not able to find the suitable candidates possessing the requisite qualifications. However, the ICSI has clarified the issue and offered the placement cell services of ICSI for granting the relief if any such case exists hence, it was a roving grievances without any base to evade from the express provision of law.
9.	P. Krishna & Associates, Chartered Accountant , Chennai.	The issues were clarified by the ICSI and there remains nothing. The issue have been raised with the professional biasness to support the evading route of the express provision of law. The exemption was asked in the name of ease of doing business. There was no question of non availability of company secretaries.
10.	Manjunath, Chartered Accountant, Chennai.	The issue was clearly addressed by the ICSI. Further there was no question of non availability of the company secretaries.
11.	Jainex Aamcol Ltd.	It is a listed company fully covered



		under the express provision of law. No question of non availability of company secretaries. Further the issue was addressed by the ICSI.
12.	Our Investments Enterprise Ltd., Ernakulum	As per the master data, the paid up capital of the company is Rs 20,21,100 and hence there is no need of appointment of company secretaries. The issue have been raised with malicious intents without being he interested party. Hnece, no merit.
13.	Agasthiyar Muni Child Care Centre, Kanyakumari District, South India.	The issue was raised that the company secretaries were not available in the market who are willing to join the companies of their size and operations. Issue was addressed completely by ICSI and have also offered the help of the placement cell of ICSI.
14.	P.H.D. Chamber of Commerce & Industry.	The issue was pertaining to technical issue of MCA portal and not related to company secretaries.
15.	Kaytee Corporation Pvt. Ltd., Mumbai	The case of the complainant is the clear violation of law and self admission for working on hiring of company secretaries only from last few months and it have been made with clear malicious intents and seems to be a fit case for legal action against them for non compliance of law.
16.	South India Mills Association	Without naming the company have made a roving allegation of non

		finding the company secretaries for few companies. ICSI has offered for immediate placement services if there is any case as such hence no merit in the case
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Sl. No.	Name of the Company/ Stakeholders	Remarks of the Applicant
1.	Rosemary Joseph, Director, Sunsea Traders Ltd. Letter dated 14.06.2019.	Issue not relating to appointment of Company Secretary.
2.	Rosemary Joseph, Director, Sunsea Cruise Lines Ltd. Letter dated 14.06.2019.	Issue not relating to appointment of Company Secretary.
3.	Rosemary Joseph, Director, Sunsea Euro Ventures Ltd. Letter dated 14.06.2019.	Issue not relating to appointment of Company Secretary.
4.	Rosemary Joseph, Director, Seaways Maritime India Ltd. Letter dated 14.06.2019.	Issue not relating to appointment of Company Secretary.
5.	Rosemary Joseph, Director SunSea Travels (India) Ltd. Letter dated 14.06.2019.	Issue not relating to appointment of Company Secretary.
6.	Rosemary Joseph, Director Tradehall Markets Ltd. Letter dated 14.06.2019.	Issue not relating to appointment of Company Secretary.
7.	Aditya Garg (email dated 14.06.2019)	Issue not relating to appointment of Company Secretary.
8.	RSC International Ltd. Letter dated 08.06.2019	The company has raised the issue of non finding of Company Secretaries inspite of their efforts. The ICSI have clarified that he has never approached to the placement

		cell of ICSI and the information rendered by him is incorrect and have clarified the other issues in detail. The question is whether the company has complied the said provisions since 2013-14, 2014-15, 2015-16, 2016-17, 2017-18. Further, the company has already appointed the CS on 01.07.2019 after this notification of INC-22A and his allegation that no company secretary is available does not sustain and his matter already resolved.
9.	IMC Chambers of Commerce and Industry Letter dated 17.06.2019	The ICSI has already clarified its issues and suggested for fresher company secretary. They have also suggested to add turn over criteria and it has been also suggested by the ICSI and being supported and requested by the applicant.
10	IMC Chambers of Commerce and Industry Letter dated 18.06.2019	Not pertains to the issue of appointment of company secretaries.
11.	Narayan Jain, patron Legal Relief Society Email dated 18.06.2019.	Roving statement have been made to increase the limit without any reason thereof hence does not sustain. It is also a case of professional biasness (To check the background of this society.)
12.	Southern India Mills Association Letter dated 13.06.2019.	Same letter have been sent twice and have already been clarified by the ICSI in its reply dated 08.07.2019.

13.	S Sundar Raman Email dated 13.06.2019	He is a practicing Chartered Accountant and have raised this objection due to professional biasness. No merit in the case. ICSI has already clarified the issue in detail.
14.	Ketan H Deshmukh Email dated 18.06.2019	The issue is not relating to appointment of company secretaries
15.	Andhra Pradesh Airports Development Corporation Ltd. Letter dated 14.06.2019	The issue is also not relating to appointment of company secretaries
16.	Andhra Pradesh Airports Development Corporation Ltd. Letter dated 08.04.2019	The issue is also not relating to appointment of company secretaries
17.	CA K. Gopala Krishna Letter dated 11.06.2019	The issue is not relating to appointment of company secretaries
18.	Liquors India Ltd. Letter dated 26.06.2019.	This company is violating the law since long time and have not appointed company secretary inspite of clear provisions of law. When the Ministry have launched INC-22A and left no option for them they have came up with excuses of non availability if company secretary.

❖ EXPLANATION AND ARBITRAINESS ON PAID-UP CAPITAL AND THE AMENDED NOTIFICATION THEREOF.

Through the Companies Amendment Act, 1974, Sec. 383 A was

inserted in the Companies Act, 1956 stating that

“383A. *CERTAIN COMPANIES TO HAVE SECRETARIES :*

*(1) Every company [having such paid-up share capital as may be prescribed] shall have a whole time secretary, and where the Board of directors of any such company comprises only two directors, neither of them shall be the secretary of the company.*

*[Provided that every company not required to employ a whole time secretary under sub-section (1) and having a paid-up share capital of ten Lakhs rupees or more shall file with the Registrar a certificate from a secretary in whole time practice in such form and within such time and subject to such conditions as may be prescribed, as to whether the company has complied with all provisions of this Act and a copy of such certificate shall be attached with Board's report referred to in section 217.]*

At that time the profession was nascent stage and the members were less hence the criteria for hiring of company secretaries was considered as Rs 25 Lakhs paid up capital which has gone to Rs 5 Crores by several changes in due course. The Ministry of Corporate Affairs (MCA) has introduced Companies Secretaries Act, 1980, “An act to make provisions for the regulation and the development of the profession of Company Secretaries.” and the Institute of Companies Secretaries of India was incorporated as statutory body under the supervision and control of Ministry of Corporate Affairs (MCA).

The paid up capital of the company represents the ownership of the company and the ratio of its contribution by different equity share holders. Even a company with the minimum

paid up capital has great opportunities for extending the business with the help of the debt, loans, financial assistance of the different institutions, corporate and can have big turn over in the market. It should also be noted that as per the current practice very small amount of investments are being considered in the paid up capital and the balance funds being treated as share premium as a part of reserve and surplus. For understanding recently Reliance Industries issued share at Rs. 1250/- (approx..) out of which only 10 was invested in paid-up capital and rest went to reserves and surplus, in this transaction company's paid capital increased only by Rs. 10 whereas money invested by the shareholder is Rs. 1250/- (per share), hence any figure which denotes paid-up capital not necessarily denotes the actual amount invested by a shareholder. Further, in the past TCS has issued shares of face value of Rs 1 (paid up capital value Rs 1) in Rs. 700, so here by the investment of Rs 700 the paid up capital will increase by only Rs 1 and Rs 699 will be share premium and will be the part of reserve and surplus.

Below mentioned entities datas are used for illustrative purpose to show entities having huge turnover with no compulsory company secretary as paid up capital is below the limit to have compulsory C.S.

S.No.	Name of the Company	Paid up capital (INR) approx.	Turnover (INR) approx.
1.	Apple India Pvt Ltd	3,50,020	13048 Cr.
2.	Google India Pvt Ltd	1,07,38,790	9338 Cr.
3.	HP (India) Pvt. Ltd	2,80,31,840	500 Cr
4.	Microsoft Corp. (India)	2,41,14,760	7301 Cr.

	Pvt Ltd		
5.	Bikanervala Foods Pvt ltd	85,00,000	4000 Cr.
6.	Rolls Royce India Pvt Ltd	1,03,72,70	100-500 Cr.
7.	Himalaya Drug Co. Pvt. Ltd.	1,00,200	1800 Cr.

Therefore, in view of the data reproduced, it can be said that Paid-up capital of the company is one of the criteria to represent the size of the company other than turnover, net worth, loans and borrowings. Company even with less paid-up capital can have large economic activity and turnover. It can be said that the value of Rs. 5 crore paid-up capital is enough for carrying various large activities with or without the help of the various banks, NBFCs, financial institutions and other financial support and hence the requirement of the company secretary for the capital of Rs. 5 Crore or more is fully justified.

Therefore, even a company with a small paid up capital can have huge turn over and it deals with various banks and financial institutions. It has also been noticed in the past that small corporate entities are more utilized for ulterior motives being either fake, fabricated and have been created for malicious intent or objective and therefore more governance is needed in these companies to avoid its mis utilization. It have been noticed that various companies remains the part of the white collar crimes or have been utilized for malicious, illegal economic activities. The striking of the company or declaring a defunct without any action gives very bad message to the public at large.

That the MCA in the year 2014 had notified Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 which got notified on 31.03.2014 and vide Rule 8,

where every listed company and every other public company having a paid up share capital of 10 crore or more shall have a whole time key managerial personnel. The said rule being arbitrary resulted in an amendment pursuant to which Government had further notified an amended notification dated 09.06.2014 by inserting Rule 8A which states the limit for appointment of Company Secretaries i.e. 5 crore for engagement of whole time C.S.

That after the commencement of the Companies Act 2013, the provision for the appointment of the whole-time company secretaries were in effect vide Rule 8 and 8A, of Companies (Appointment and Remuneration Of Managerial Personnel) Rules, 2014 and Section 203 of the Companies Act 2013. It is important to mention here that none of the corporate across the country had raised any issue till the commencement of INC- 22A in the year 2019, pursuant to which 17 defaulter entities showed their inability to engage C.S. and to cover-up their default sent grievance with concocted stories before the MCA.

ICSI send a detailed response by entertaining each and every issue. It is clear from the letters and reply annexed with the representation that grievance were mere excuses for ignoring Corporate Governance, mandatory compliance and step to escape from penalties.

Here it is important to mention that defaulters who chose to proceed without the compliance of Section 203 i.e. engagement of full time C.S. In their grievance to MCA used an excuse of shortage of company secretary which perhaps resulted in an initiation of amendment procedure.

M.C.A. forwarded the concerned letters to I.C.S.I. for ascertaining the grievances which was replied, stating in detail



that there is No Shortage of Company Secretary, and further gave the figures that there are 35,158 Company Secretaries in India as on 31.03.2014 and there were approx. 27,785 companies required whole time company secretary hence there is no shortage of company secretaries.

Furthermore, with respect to the issue of shortage of company secretary neither the ICSI or MCA Annual report nor any report or the media or any such information available in the public domain at any time to justify the same.

It is important to state that after going through the contents one can determine that defaulters formed a cartel and misrepresented the MCA to escape from penalty, mandatory checks and balances by using company secretary as a puppet for continued non compliance of Corporate Governance.

That even I.C.S.I. vide its letter dated 08.07.2019 had addressed M.C.A. in response to the grievance forwarded by the stakeholders and have stated that the present parameters for appointment of Company Secretary framed by MCA are absolutely aligned with the present requirements; and therefore, need to be kept intact.

It is important to mention here that before amending the limit under Rule 8 A, Ministry of Corporate Affairs had taken discussed and took opinion over the issue from I.C.S.I. But none was appreciated.

The I.C.S.I. has suggested M.C.A. for adding the criteria of turnover and net worth in addition to the paid-up capital.

Moreover, most importantly if anyone is aggrieved from compliance of section 203 or wishes to avoid compliance then instead of being a violator, an option to reduce the paid-up capital can be availed.

The number of active companies with the paid-up capital is as under (Report dated 01.01.2015, data dated 31.12.2014.)

Paid up capital Range	Distribution of Active Companies with respect to Paid-up Capital Total No. of Companies	Paid-up Capital
Above 1 crore to 2 crore	32,207	47,709.94
2 cr to 5 cr	29,390	96,959.99
5 cr to 10 cr	11,532	83,376.46
10 cr to 25 cr	8,635	136,177.40
25 cr to 100cr	5,279	253,894.63
100 cr to 500 cr	1,752	370,176.43
500 cr to 1000 cr	288	202,021.28
Above 1000 crore	299	967,384.54

As per the said report the number of companies in the bracket of paid up capital above Rs. 5 crores to Rs 10 crores were 11,532 .It is important to mention here that figures in above table pertains till 31.12.2014 and as of now numbers would have increased hence impugned notification not only compromising with Corporate Governance for minimum 11,532 companies.

That the I.C.S.I. also being dissatisfied with the said amendment and rejection of its repeated proposals sent a letter dated 10.01.2020 for further amendment in the rule and gave suggestions.

ARBITRARINESS AND SERIOUS ISSUES OF CORPORATE GOVERNANCE THEREOF:

- a. In spite of express and clear legal position it has been noticed that a lot of companies have intentionally have not hired the company secretaries and have non complied the

provision since long back and have made malicious compromise with the Corporate Governance. Not only this it has been noticed that out of approx. 18.5 Lakhs Companies approx one third are even not complying with the annual filing of balance sheets and annual returns. A lot of cases of non existence of the registered offices, absconded directors have been noticed and there was not whereabouts, communication and compliance by these companies and hence there were big challenges to review the entire current corporate system and to insure the whereabouts, compliances from the corporate who wants to continue. Not only this the Ministry has decided to removal of names of the companies from the Registrar of the Companies (ROC) and 2,34,357 companies were closed during the financial year 2017-18 totaling to the paid up capital of Rs 14593.95 Crores, similarly in the financial year 2018-19, 1,38,432 companies were struck off with the total paid up capital of Rs 12753.19 Crores. The statics of the companies registered, and company closed are being clear from the following tables taken from annual report of the MCA.

➤ Table 3.13

- Number of Companies Closed during Financial Year 2011-12 to 2018-19

Financial year	Liquidated/Dissolved	Defunct/Struck-off	Amalgamated/Merged	Converted to LLP and Dissolved	Total
2011-12	250	37,857	3,241	774	42,122
2012-13	141	13,138	1,999	681	15,959
2013-14	81	10,473	1,550	1,170	13,274

2014-15	112	16,558	1,931	4,068	22,669
2015-16	26	13,464	1,607	3,097	18,194
2016-17	16	7,743	1,890	2,959	12,608
2017-18	194	234,371	1,695	2	236,262
2018-19	155	138,446	2,061	2,571	143,233

- b. Not only this, there were shocking results on whereabouts of the directors and KYC thereof. MCA has introduced a mandatory e-Form viz. DIR-3 KYC for all DIN holders who have been allotted DIN on or before 31<sup>ST</sup> March, 2018 and whose DIN is in approved status. This drive is aimed at verification of individual DIN holders and weed out non-existent/ dummy DIN holders and ultimately to clean up the Directors' e- Registry. The KYC process is obtaining additional details such as AADHAR, Passport, personal mobile number and personal email id. Further, for stakeholders who do not possess AADHAR, an exception management is provided. There are around 33 Lakhs DINs in the registry and around 15.88 Lakhs DIN holders have filed DIR KYC as on 30<sup>th</sup> November, 2018. In this drive, MCA managed to feed 11 Lakhs AADHAR Card holders. This is one of its kinds of drive carried out anywhere in India. [The extract is taken from Page 85. Para 8.5.1, Sub-para v. from 5<sup>th</sup> Annual Report (Year ending 31.03.2019) of the Ministry of Corporate Affairs.]
- c. However, it is shocking that when the applicant has analyzed the filing of Annual Reports/ Accounts by different companies and the annual returns and non compliances thereof it was shocking. It was noticed that even in the FY 2018-19, it was shocking that approx. 2 to

4 Lakhs companies have not filed the annual accounts to the MCA, the exact figures year wise is available in the table and it was shocking that even in the FY 2018-19, 15,693 companies have not filed their financials and 50,866 companies have not filed their annual return even in FY 2018-19. The figures from FY 2013-14 TO 2108-19 shocked the mind of the applicant. It was also shocking that approx. one third of the active companies have neither filed their annual accounts or the annual return with the Ministry. The question raised for the kind consideration your good self that if such was the level of non compliances what was the other action which has been taken by the MCA and what was the ultimate results of the same. Such types of severe non compliances are highly destructive for the economy and trust of the common public of the country.

- d. The company may be public, private or listed but in the real sense there is nothing private in nature and being the legal entity all the corporate deals with common public, banks, financial institutions and if one third of the Corporate India remain even not able to present the annual account and annual returns before the MCA and if no requisite actions have been taken after the expiry of the filing period or the extended period if thereof during the financial year itself it remains a great question mark on the working of the corporate world. Further these companies may have defrauded a lot of investors, common public, banks and financial institutions therefore; the action of striking off the name of the company and only make them disqualified cannot serve any purpose practically and

cannot be treated as justice with the public at large.

Analysis of Annual Filings by Companies - Defaults - Prosecutions thereof from 2013-2019:

Analysis of Annual Filings by Companies - Defaults - Prosecutions thereof from 2013-2019

S.No	FY	Active Companies (a)	Financial Statements Filed (b)	Non Filers Companies (Non Filing of Financials)	Annual Return Filed (c)	Non Filers Companies (Non Filing of Annual Return)	Prosecution launched under Companies Act, 1956		Prosecution launched under Companies Act, 2013		Total Prosecutions	DIN Issued
				(a)-(b)		(a)-(c)	Non filing of Annual return	Non filing of Financials	Non filing of Annual return	filing of Financials		
1	2018-19	1156374	1140681	15693	1105508	50866	43	85	318	303	749	305104
2	2017-18	1167858	949120	218738	937874	229984	261	241	452	743	1697	316191
3	2016-17	1169303	851007	318296	818006	351297	503	Not Available	2481	Not Available	2984	297961
4	2015-16	1088780	675992	412788	652707	436073	479	Not Available	155	Not Available	634	245095
5	2014-15	1022011	771043	250968	765392	256619	102	106	72	69	349	219647
6	2013-14	952433	660789	291644	663073	289360	2377	3524	NA	NA	5901	245421

Source: Annual Report of MCA of various years.

- e. It should further be noted that table 6.3a page no. 63 to page no. 66 of the aforesaid annual report reflects the nature of defaults and number of prosecutions during 01.04.2018 to 31.03.2019 under the Companies Act, 1956. There are only 795 prosecutions/ number of cases. It is also surprising that during this FY of 2018-19 very small number of cases like for annual accounts and balance sheets only 36 prosecutions has been lodged. That only 42 cases of non filing of annual reports have been reflected. Similarly table 6.3b of page no. 67 to 71 of the annual report 2019 year ending with 31.03.2019 reflects only 318 cases of non filing of the annual returns, 303 cases of non filing of financial statements and only 215 cases of non furnishing the true and fair value in the financial

statements. The extracts from the said table pertaining to some important provisions are presented herewith for immediate reference.

➤ Table 6.3(A)

- Nature of Defaults and Number of Prosecutions filed during 1<sup>st</sup> April, 2018 to 31<sup>st</sup> March, 2019 under Companies Act, 1956 – Extracts from table 6.3 (A) Annual Report of MCA 2019

S. No. (1)	Sections (2)	Nature of Defaults (3)	No. of Cases (4)
1	159	Annual return to be made by company having a share capital	43
2	162	Non filing of Annual Returns	42
3	166	Annual General Meeting	43
4	211	Form and contents of balance-sheet and profit and loss a/c	174
5	217	Board's Report	30
6	220	Non filing of Balance Sheets	85
7	224	Appointment and remuneration of auditors	15
8	227	Powers and duties of auditors	20
9	233	Non compliance by auditor with section 227	28
10	628	Penalty for false statement	31
11	383A	Non-appointment of Company's Secretary	14
12	58A	Non repayment of matured fixed deposit	33
Total			558

➤ Table 6.3(B)

- Nature of Defaults and Number of Prosecutions filed during 1<sup>st</sup> April, 2018 to 31<sup>st</sup> March, 2019 under Companies Act, 2013 - Extracts from table 6.3 (B) Annual Report of MCA 2019

○

S. No. (1)	Sections (2)	Nature of Defaults (3)	No. of Cases (4)
1	92	Non filing of Annual Returns	318
2	96	Annual General Meeting	30
3	99	Non holding of Annual General Meetings	40
4	129	Non furnishing true and fair value in the financial statement	215
5	134	Financial statements and board reports	70
6	137	Non-filing of financial statements	303
7	148	Non filing of Cost Audit Reports	60
8	203	Appointment of key managerial personnel	14
9	204	Secretarial audit for bigger companies	3
10	301	Arrest person trying to leave India	3
11	447	Punishment for fraud	18
12	448	Punishment for False Statement	37
13	450	Punishment where no specific penalty or punishment is provided.	25
14	454	Non payment of adjudication penalty	59
15	383A,203	Appointment of KMP/Service on foreign company	1
Total			1196



f. Further, inspite of such voluminous non compliances the progress of the prosecution during the last three years from 2015-16 to 2018-19 as indicated in table 6.4 page no. 70 of the Annual Report, 2019 divulge various inactions and omissions.

Progress of Prosecution during last three Years

Sl. no.	Subject	2016-17	2017-18	2018-19
(1)	(2)	(3)	(4)	(5)
1.	Number of companies prosecuted	2,308	1,764	958
2.	Number of prosecutions started during the year.	4,522	3,972	2,573
3.	Number of Prosecutions pending at the beginning of the year.	46,979	48,987	44,278
4.	Number of Prosecutions disposed during the year.	2,513	8,681	12,886
5.	Convictions	828	572	680
6.	Number of Prosecutions ending in acquittals.	75	110	105

7.	Number of Prosecutions disposed of otherwise.	1,506	2,863	1,167
8.	Number of Prosecutions pending at the end of the year.	48,988	44,278	33,965
9.	Total fine imposed (In Rs.)	1,14,05,987	7,02,10,532	3,97,83,699
10.	Total amount awarded as cost to Registrar (In Rs.)	77,69,837	1,05,30,205	82,98,352
11.	Percentage of conviction to total cases decided.	32.94	6.58	5.27
12.	Average number of prosecutions per company prosecuted during the year.	1.95	2.25	2.68
13.	Average fine imposed per case ending in conviction (In Rs.)	13,775.34	1,22,745.68	58,505

ROLE OF COMPANY SECRETARIES – BACKGROUND –  
CURRENT LEGAL PROVISIONS- MASTER ROLE TO PLAY  
IN CORPORATE GOVERNANCE – CORPORARTE

### GOVERNANCE WARRIORS:

Company Secretary- A Catalyst to good governance.

- Good governance relates to systems of supervision, monitoring and sharing of information with the stakeholders to generate confidence and trust with the customers, suppliers, creditors and maximizing corporate value for its shareholders. Although Corporate Governance varies across countries, there is growing consensus about the need for four key elements – transparency, fairness to all stakeholders, disclosures of all the financial and non financial information in an easily understandable manner and supervision of the company’s activities by professionally competent and independent Board of Directors. To build the confidence, it is desirable that some system be in place, firstly to ensure due compliance of laws and secondly to bring transparency in informing the shareholders and other stakeholders about how the business is being managed.
- It is here that the company secretary, as an integrated manager, fills the gap. He not only advises the Board on various compliance requirements and co- ordinates and translates the policies of the Board into action, but also communicates the same to stakeholders.
- The Company Secretary has all along been conceived as an extended arm of the Government for the purpose of ensuring compliance of various laws by the companies and is recognized under the MRTP Act, Income Tax Act and various other statutes as the principal officer of the company.
- In 1956, when the Companies Bill was led before the Parliament the then Finance Minister Late Shri. D.C. Deshmukh had assured the Parliament that the Companies Act would be amended in due course so as to ensure that every company should have a qualified Company Secretary analogue to the provision of the UK Companies Act. In 1970 when the system of managing agents and secretaries and treasurers was

abolished, the Government of India envisioned that the Company secretaries would fill the bill.

- Indeed, Company Secretaries have been functioning in the corporate sector long before the statutory requirement of compulsory requirement of company secretary was introduced in the year 1975. In 1970, recognizing the important role which the company secretaries played for the proper working of the company, the Department of Company Affairs had instructed all public sector undertakings to appoint qualified secretaries.
- While moving the Company Secretaries Bill, 1980 for consideration by the Lok Sabha on 16<sup>th</sup> June 1980, the Minister of Law, Justice and Company Affairs, Shri P Shivshankar had said “An essential ingredient in the healthy growth of the corporate sector is the induction of professional management. The Government attaches special importance<sup>3</sup> to the development of professional management, so that the corporate sector can evolve and function in tune with the changing needs of the times, and the social responsibilities that the important segment of the economy has to shoulder. The profession of Company Secretaries has an important part to play in the introduction of professionalism in the area of the corporate management.

Core Competency of Company Secretaries:

- In UK, the Cadbury Committee in its report on the financial aspects of Corporate Governance also recognized the importance of the role of the Company Secretary and observed “ The Company Secretary has a key role to play in ensuring that the board procedures are both followed and regularly reviewed . The Chairman and Board will look to the Company Secretary for guidance on what their responsibilities are under the rules and regulations to which they are subject and on how these responsibilities should be discharged.”

- The OECD Principles of Corporate Governance provide that the Chairman of a company may be supported by the Company Secretary and that the contributions of non- executive board members to the company can be enhanced by providing access to certain key managers within the company such as, the Company Secretary.
- A Company Secretary as competent professional comes in existence after exhaustive exposure provided by the Institute through compulsory coaching, rigorous training and continuing education programmes. The member of the institute are not only conversant with the technicalities and provisions of the corporate legal areas but are highly specialized professionals in the matters of procedural and practical aspects involved in the compliances enjoined under various statutes and the rules, regulations, bye-laws and guidelines made there under. The detailed syllabus for Company Secretaryship synthesizes corporate, taxation, economic, financial, commercial, industrial and allied laws in additions to the management, administration, finance and accounts. It is well recognized that the corporate laws in the core area of specialization of Company Secretaries. He is essentially a compliance man with compliance bent of mind.
- Company Secretary being a key functionary in the corporate sector, his role, functions and responsibilities have winded over the years. With increasing emphasis on the principle of good governance and introduction of various provisions in relation thereto, a Company Secretary now has enhanced responsibility for safeguarding the interest of the stakeholders.
- A Company Secretary deals with a wide spectrum of legislatures, finance and management far transcending the provisions of the Companies Act and most importantly acts as an agent ion behalf of the Board. Raising of finance in India and abroad, dealing with deposits , inter corporate loans and investments, raising of funds from financial

institutions, joint ventures and foreign collaborations, corporate restructuring, vetting of contracts, arbitration and other legal matters which every company has to address, are being handled by the professionally qualified Company Secretaries.

Section 383A (Certain Companies to have Secretaries) was inserted by Act 41 of 1974, Section 30, with effect from 01<sup>st</sup> February, 1975, stating that “Every company {having such paid up share capital as may be prescribed} shall have a Whole Time Company Secretary and where the Board of Directors of any such company comprises only two directors, neither of them shall be the secretary of the company.” The said prescribed capital has changed from time to time and the paid up capital remains Rs 5 Crores for appointment of Whole Time Company Secretary since 2009.

THE CURRENT PROVISIONS, ROLE AND RESPONSIBILITIES OF THE COMPANY SECRETARIES PLAYING MASTER ROLE IN CORPORATE GOVERNANCE PROTECTING THE INTEREST OF ALL STOCK HOLDERS.

1. That the Companies Act, 2013 has clearly based on the substantive provisions that who will operate the company and have prescribed the minimum number of persons for the administration of the company. Sec 203 of the Companies Act, 2013 extracts presented herein below:

“203. Appointment of key managerial personnel

(1) Every company belonging to such class or classes of companies as may be prescribed shall have the following whole-time key managerial personnel,—

(i) Managing director, or Chief Executive Officer or manager and in their absence, a whole-time director;

(ii) Company secretary; and

(iii) Chief Financial Officer.....

(2) Every whole-time key managerial personnel of a company shall be appointed by means of a resolution of the Board containing the terms

and conditions of the appointment including the remuneration.

(3) A whole-time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time:

Provided that nothing contained in this sub-section shall disentitle a key managerial personnel from being a director of any company with the permission of the Board:

Provided further that whole-time key managerial personnel holding office in more than one company at the same time on the date of commencement of this Act, shall, within a period of six months from such commencement, choose one company, in which he wishes to continue to hold the office of key managerial personnel:

Provided also that a company may appoint or employ a person as its managing director, if he is the managing director or manager of one, and of not more than one, other company and such appointment or employment is made or approved by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting and of which meeting, and of the resolution to be moved thereat, specific notice has been given to all the Directors then in India.

(4) If the office of any whole-time key managerial personnel is vacated, the resulting vacancy shall be filled-up by the Board at a meeting of the Board within a period of six months from the date of such vacancy.

(5) If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every director and key managerial personnel of the company who is in default shall be punishable with fine which may extend to fifty thousand rupees and where the contravention is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.

2. Section 205 of the Companies Act, 2013 has described the functions of a Company Secretary:

“205. Functions of company secretary

(1) The functions of the company secretary shall include,—

(a) To report to the Board about compliance with the provisions of this Act, the rules made there under and other laws applicable to the company;

(b) To ensure that the company complies with the applicable secretarial standards;

(c) To discharge such other duties as may be prescribed.

Explanation.—For the purpose of this section, the expression “secretarial standards” means secretarial standards issued by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 and approved by the Central Government.

(2) The provisions contained in section 204 and section 205 shall not affect the duties and functions of the Board of Directors, chairperson of the company, managing director or whole-time director under this Act, or any other law for the time being in force.

3. Further, Sec. 2 (51), has defined key managerial persons in relation of a company as under:

Sec 2 (51) “key managerial personnel”, in relation to a company, means—

(i) The Chief Executive Officer or the managing director or the manager;

(ii) The company secretary;

(iii) The whole-time director;

(iv) The Chief Financial Officer; and

(v) Such other officer as may be prescribed;



4. Further Sec 2(59) & 2 (60) has defined Officer and Officer who is in Default respectively as under:

2(59) “officer” includes any director, manager or key managerial personnel or any person in accordance with whose directions or instructions the Board of Directors or any one or more of the directors is or are accustomed to act;

2(60) “officer who is in default”, for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:—

(i) whole-time director;

(ii) Key managerial personnel;

(iii) Where there is no a key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;

(iv) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorizes, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;

(v) Any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;

(vi) Every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such

contravention had taken place with his consent or connivance;

(vii) In respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer;

5. Further 2 (24) of the Companies Act, 2013 has defined Company Secretary Or Secretary as under:

“company secretary” or “secretary” means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 who is appointed by a company to perform the functions of a company secretary under this Act;

6. Further Rule 8 and Rule 8A OF the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 states as under:

(Rule 8) Appointment of Key Managerial Personnel.- Every listed company and every other public company having a paid-up share capital of ten crore rupees or more shall have whole-time key managerial personnel.

Further Rule 8 A was inserted with effect from 9<sup>th</sup> June, 2014 as under:

Rule 8 A -- Appointment of Companies Secretaries in Companies not covered Under Rule 8—A company other than a company covered under Rule 8 which has a paid up capital of five crore rupees or ,one shall have a whole time company secretary.

Rule 10. Duties of Company Secretary.-

The duties of Company Secretary shall also discharge, the following duties, namely:-

- (1) To provide to the directors of the company, collectively and individually, such guidance as they may require, with regard to their duties, responsibilities and powers;
- (2) To facilitate the convening of meetings and attend Board, committee and general meetings and maintain the minutes of these meetings;
- (3) To obtain approvals from the Board, general meeting, the government

and such other authorities as required under the provisions of the Act;

(4) To represent before various regulators, and other authorities under the Act in connection with discharge of various duties under the Act;

(5) To assist the Board in the conduct of the affairs of the company;

(6) To assist and advise the Board in ensuring good Corporate Governance and in complying with the Corporate Governance requirements and best practices; and

(7) To discharge such other duties as have been specified under the Act or rules; and

(8) Such other duties as may be assigned by the Board from time to time.

**CRITERIA WHEN SERVICES OF CS & PCS ARE REQUIRED BASED ON**

**LIMITS:**

<p>Certification of Annual Return by a Company Secretary in practice.</p> <p>As per Provisions of Section 92 of Companies Act, 2013 read with sub rule 2 of Rule 11 Chapter VII, Companies (Management and Administration) Rules, 2014.</p>	<p>a) All LISTED Companies</p> <p>b) Every Company having;</p> <ul style="list-style-type: none"> <li>• Paid-Up share capital of 10 Crore (Ten Crore) rupees or more or</li> <li>• Turnover of 50 Crore (fifty Crore) rupees or more</li> </ul>

<p>Signing of Annual Return by a Company Secretary in practice.</p> <p>As per Provisions of Section 92 of Companies Act, 2013 read with sub rule 2 of Rule 11 Chapter VII, Companies (Management and Administration) Rules, 2014.</p>	<p>a) All LISTED Companies</p> <p>b) All PUBLIC Companies</p> <p>c) Private Limited Company having:</p> <ul style="list-style-type: none"> <li>• Paid up share Capital Exceeding 50 lac; or</li> <li>• Turnover exceeding 2 Crore</li> </ul>	<p>a) One Person Company</p> <p>b) Small company</p> <p>c) private company (if such private company is a startup) (These are the companies exempted from signing of Annual Return by Company Secretary.)</p>
<p>Companies which shall appoint Company Secretary</p> <p>As per Provisions of Section 203 of Companies Act, 2013 read with Rule 8A Chapter XIII, Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014.</p>	<p>a) All LISTED Companies</p> <p>b) Every other company having a paid-up share capital of Rs. 5 Crore (Five crore rupees) or more:</p>	

<p>Secretarial Audit</p> <p>As per Provisions of sub section '1' of Section 204 of Companies Act, 2013:</p> <p>As per Provisions of Section 204 of Companies Act, 2013 read with Rule 9 Chapter XIII, Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014.</p>	<p>a) All Listed Companies</p> <p>b) Every Public Company having;</p> <ul style="list-style-type: none"> <li>• Paid-Up Share Capital of Rs. 50 Crore (fifty crore rupees) or more; or</li> <li>• Every Public Company having a Turnover of Rs.250 Crore (two hundred fifty crore rupees) or More</li> </ul>
<p>Key Managerial Personnel</p> <p>As per Provisions of Section 203 of Companies Act, 2013 read with Rule 8 Chapter XIII, Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014:</p>	<p>a) All Listed Companies</p> <p>b) Every Public Company having Paid-Up Share Capital of Rs. 10 Crore (Five crore rupees) or more.</p> <p>c) *Every Private Limited Company having Paid- Up Share Capital of Rs. 5 Crore (five crore rupees) or more required to appoint Company Secretary and designate as Key Managerial Personnel. (The new notification has increased the paid up capital limit of Rs. 10 Crores- The applicant has challenged the new notification to get it set aside and stay immediately and to prevail the earlier Rule 8A which says that all the companies whose paid up capitals are above Rs 5 Crores should have a mandatory Whole Time Company Secretary.</p>

OF COMPANY SECRETARIES OF INDIA FOR CARING  
THE CORPORATE GOVERNANCE AND THE NUMBER OF  
COMPANIES BEING INCORPORATED YEAR WISE.

From the above said table taking the average of seven years(considering 2019 as a full year, only for calculation) the average company secretaries/ member coming into the market is approx 4077 members per year. If we take the registration of the company from year 2011-12 to 2018-19 the average company of incorporation of last eight years comes around 95,857 companies per year. The table is presented herewith for immediate reference.

ITEM	TOTAL	NO. OF INCREASE
As on 31.12.2019	60,628	3,082
As on 31.03.2019	57,546	3,161
As on 31.03.2018	54385	4188
As on 31.03.2017	50197	6237
As on 31.03.2016	43960	5222
As on 31.03.2015	38738	3580
As on 31.03.2014	35158	3070

Table 3.4 Registration of Companies Limited by Shares during Financial Year  
2011-12 to 2018-19

(Rs. in  
crore)

Financial Year	Private		Public		Total	
	No. of Companies	Authorized Capital	No. of Companies	Authorized Capital	No. of Companies	Authorized Capital
1	2	3	4	5	6	7
2011-12	96,159	23,217.96	3,480	11,600.38	99,639	34,818.34

2012-13	88,998	31,418.13	3,385	26,118.48	92,383	57,536.61
2013-14	94,924	19,698.03	3,105	19,174.09	98,029	38,872.12
2014-15	62,643	8,868.53	1,466	22,953.84	64,109	31,822.37
2015-16	82,318	12,769.70	1,766	30,296.32	84,084	43,066.02
2016-17	95,328	16,596.52	2,113	14,660.26	97,441	31,256.78
2017-18	105,781	47,988.16	1,918	55,197.19	107,699	103,185.35
2018-19	120,692	63,979.41	2,784	20,071.35	123,476	84,050.76

It should further be noted that the paid up capital of the company always cannot represent the performance, profile and large activity of business. Company even with less paid up capital can have large economic activity and turnover. The ICSI has rightly suggested and made the representations before the MCA for adding the criteria of turnover and net worth in addition to the paid up capital. For immediate reference and understanding the applicant is presenting herewith the name of the few corporate entities having large economic activities/turnover with minimum paid up capital.

The entire communication on the said notification has been duly covered in the List of Dates and Events with the vital facts thereof as under:

LIST OF DATES AND EVENTS

Letter/ Dates/ Year	Particulars/ Remarks
29.08.2013	Companies Act, 2013 was introduced replacing Companies Act, 1956 with the objective of self governance, transparency and stringent provisions against the defaulters non complying the Act. Further containing the provisions of appointment of whole time

	company secretary in prescribed company U/Sec 203 of the Companies Act, 2013.
31.03.2014	That the MCA has notified Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 stating that every listed company and every other public company having a paid share capital of Rs 10 Crore or more shall have a whole time key managerial personnel including whole time company secretary.
09.06.2014	Immediately it was realized that all the private companies has got out of the appointment of the whole time company secretary which was there since 1975. Once it was realized and pointed out by the stake holders immediately the notification dated 09.06.2014 has come inserting Rule 8A in the above Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, stating that “A company other than a company covered under Rule 8 which has a paid up capital of Rs 5 Crore or more shall have a whole time company secretary.
FY 2017-18	Ministry has decided to removal of name of companies from the Registrar of Companies (ROC) and 2,34, 357 companies were closed during the FY 2017-18, totaling to the paid up capital of Rs 14,593.95 Crores. As these companies were falling in the categories of



	continued non compliances even non filing of annual accounts and annual returns.
FY 2018-19	Similarly in the FY 2018-19, 1,38,432 companies were struck off with the total paid up capital of Rs 12,753.19 Crores due to continued non compliance and the Ministry actions thereof.
30.11.2018	There were 33 Lakhs DINs (Director Identification Number) in the registry and around 15.88 Lakhs DIN holders have filed DIR KYC as on 30.11.2018 (48.121% Directors remained non complied inviting questions on their sanctity, existence, and traceability). in the drive by MCA managed to feed only 11 Lakhs Aadhar Card holders. The non compliances, non traceability, fake, fabricated, benamies, dummy companies and directors has become grave concerns being utilized for malicious illegal economic activities and white collar crimes.
31.03.2019	As per the annual report of MCA (Ministry of Corporate Affairs) out of total 18,73,044 companies, 6,70,018 companies were closed [35.77% (more than one third) of the total companies] were closed due to non compliances/ serious governance issues and only 11,56,374 companies were ACTIVE companies as on 31.03.2019. The Ministry has decided to weed out inactive companies and

	disqualified directors, protect the public money, overcome the financial irregularities and increase the effectiveness of the governance mechanism.
25.04.2019	The ministry has issued notification dated 21.02.2019 for filing of FORM ACTIVE (Active Company Tagging Identities and Verification) on or before 25.04.2019. This Form was prepared by the ministry with exhaustive research getting the whereabouts of the companies registered office, KMPs, all statutory officials, auditors, cost auditors, M.D., company secretaries e.t.c. and it was carrying the stringent conditions for compliances and it was too difficult to continue the non compliances. Beside several critical informations controlling the company it was asking the complete PAN and membership number of the whole time company secretary of the company. These stringent provisions have created great barrier in continued non compliances/non-governance.
15.06.2019	The said notification for filing of INC 22A FORM ACTIVE was further extended to 15.06.2019 without any additional fee and thereafter with additional fee of Rs 10,000/- vide notification dated 25.04.2019.
17.06.2019	Ministry has issued letter dated 17.06.2019 to

	<p>ICSI (Institute of Company Secretaries of India- A statutory body under the Company Secretaries Act, 1980- Monitoring the profession of company secretaries and Corporate Governance), forwarding the different letters dated 04.04.2019, 09.04.2019, undated letters and emails of 16 individual, firms and companies raising their different concerns before the ministry including grievances of few one about not able to attract company secretary due to high salary, affording salary of company secretary, exemption for private companies with less turn over, non availability if company secretaries. Out of the above said 16 grievances, 6 grievances were pertaining to non availability of the company secretary in the market. The roving grievances were raised without any base to evade the compliance of the appointment of company secretaries.</p>
08.07.2019	<p>The ICSI has addressed individually all the grievances of the stake holders and have stated that keeping in mind the present parameters for appointment of company secretary which are framed by MCA after a lot of public debate and deliberations are absolutely aligned with the present requirements; and therefore, need to be kept intact. Needless to mention that the level of</p>

	<p>compliance as envisaged by the Government is rising day by day. It was specifically stated “That, out of total active companies, i.e. approximately, 11 Lakh companies, only 39,805 companies are required to appoint a whole time company secretary. We wish to submit that as on 01<sup>st</sup> July, 2019, ICSI has 58,690 company secretaries on its register out of which only 10,644 are in practice. Accordingly, sufficient numbers of company secretaries are available to serve the corporate India. Further, ICSI through its dedicated placement cell provides placement services to corporate to meet the demand and supply of the company secretaries across the country.</p>
09.07.2019	<p>The ministry has further forwarded letter dated 08.07.2019 which was received by the ICSI on 09.07.2019 containing 18 more grievances sent by different stake holders for the comments of the ICSI. Out of the 18 grievances 12 were not related to appointment of company secretaries and it was pertaining to other concerns. Further, out of 18, 4 have raised the grievances that they are not able to find a company secretary or there is a deficit of members in the market. These allegations were completely bogus and it has been raised ulterior motives to continue the non compliances of the express provisions of law.</p>

25.07.2019	<p>The ICSI has addressed and made its comments individually on all the grievances of the stake holders and reiterated that “We, once again, reiterate that the present parameters for appointment of company secretary which are framed by the MCA after a lot of public debate and deliberations are absolutely aligned with the present requirements; and therefore, need to be kept intact. Needless to mention that the level of compliance as envisaged by the Government is rising day by day.</p> <p>We Shall be pleased to provide any further information or clarification in this regard on hearing from your good self.”</p>
03.01.2020	<p>The MCA has issued the notification dated 03.01.2020 stating that “Every private company which has a paid up share capital of Rs 10 Crores or more shall have a whole time company secretary. The consequence thereof, all the public and private company having the paid up capital of less than Rs 10 Crores were totally exempted from the appointment of whole time company secretary. As per the report dated 01.01.2015 containing the data as on 31.12.2014, there were 11,532 companies having the paid up capital of Rs 83,376.46 Crores under the bracket of paid up capital of above Rs 5 Crores to Rs 10 Crores. Hence, a big question mark has come on the</p>

	<p>employment of approximately more than 11,000 company secretaries, great compromise with the Corporate Governance of these companies and have made the impact on 3.5 Lakhs students on the roll of the ICSI, who is seeing their future in the field of Corporate Governance and company secretaries and hence the protest has started across the country.</p>
08.01.2020	<p>As the capital limit has increased inspite of the comments and efforts of the ICSI and the members has started questioning the role and responsibilities of the institute and its council members, it has issued a letter to the members stating that “It was because of your institutes continuous involvements and representations, the enhancements in limits has been limited to Rs 10 Crores only and not beyond.” Further, it was also stated that ICSI is committed provide whole hearted support to its members and students and will take all necessary measures as may be required. It has also appealed to the members and students “We earnestly appeal all our members and students not to post any derogatory or defamatory remarks against the regulators, stakeholders or Institute on the social media or by any other means, keeping in view its far reaching impact on the credibility of the profession.” That the</p>

	<p>Institute has threatened the members and the students from making the protests and questioning the failure of the ICSI and its councils and have restricted the freedom of speech and expression. The ICSI and the council has also threatened the members for the disciplinary proceedings.</p>
09.01.2020	<p>The ICSI has again issued the advisory to all the regional council members, chapters and others stating that “It is advised to refrain from making any derogatory or defamatory comment against the MCA or the ICSI. Further you are advised from refrain the facilitating the demonstration by the members and the students. Also the regional councils/ Chapters/ Units are advised not to make any representation in this regard at their end directly to any authority /forum, as the institute has already in process of once again taking up the matter with the MCA. So by these advisory again the members were restricted from raising the voice on the said change and protest thereof.</p>
10.01.2020	<p>The ICSI has written the letter to the MCA stating that the said “Amendment has caused a apprehension in the mind of our members and students and there has been lots of resentment in the fraternity across the country.” The ICSI has requested for further amendment in to the</p>

rule taking into account the following suggestions:

**SUGGESTION -1:**

Every company which has a paid up share capital of more than Rs 5 Crores and up to Rs 10 Crores and

Turnover of hundred Crores rupees or more;  
or

Outstanding loans or borrowings from banks or public financial institutions of one hundred crores rupees or more;

Shall have a Whole Time Company Secretary.

Explanation- For the purpose of this sub rule, the paid up share capital, turnover, or outstanding loans or borrowings as the case may be, existing on the last date of latest audited financial statement may be taken into account.

**Or ALTERNATE SUGGESTION -2:**

Every Company which has:

A paid up share capital of ten crores rupees or more;

Turnover of one hundred crores rupees or more; or

Outstanding loans or borrowings from banks or public financial institutions of one hundred crores rupees or more.;

Shall have a Whole Time Company Secretary.

Explanation:- For the purpose of this sub rule,



	<p>the paid up share capital, turnover, or outstanding loans or borrowings as the case may be, existing on the last date of latest audited financial statement may be taken into account.</p>
11.01.2020	<p>That the applicant not being satisfied by the reasoning and the submissions of the institute and its officials have requested for open house sessions or presentation before the Council for the strong submission before the Ministry. Copy of the said letter dated 11<sup>th</sup> January, 2020 is enclosed herewith and marked as Annexure- 7. However, the said letter remain un responded from the ICSI.</p>
03.02.2020	<p>However, the ICSI have re approached for the further amendment in the rule vide letter dated 03<sup>rd</sup> February, 2020 (Copy of the same is enclosed and marked herewith as Annexure – 8) with the prayer that to kindly consider further amendment in Rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2013, taking into consideration inserting the following in place of the existing provision:</p> <p>“Every company which has:</p> <ol style="list-style-type: none"> <li>a. A paid up share capital of ten crores rupees or more; or</li> <li>b. Net worth of one hundred crores rupees or more; or</li> </ol>

	<p>c. Outstanding loans or borrowings from banks or public financial institutions of one hundred crores rupees or more; or</p> <p>d. Turnover of two hundred fifty crore rupees or more</p> <p>Shall have a Whole Time Company Secretary.</p> <p>Explanation:- For the purpose of this rule, the paid up share capital, net worth, outstanding loans or borrowings or turnover as the case may be existing on the last date of latest audited financial statement may be taken into account.</p> <p>Every company which ceases to be a company covered under Rule 8A for three consecutive financial years shall not be required to appoint company secretary till such time it meets the criteria specified in Rule 8A.</p>
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- (i) Further, the applicant is being aggrieved by the serious compromise with the Corporate Governance and with the analytical data of continued non compliances, no whereabouts of more than one third of the companies which has got closed and even the various listed companies have vanished. As a common citizen of this country without any personal interest for the betterment of the common citizen of this country to get ensure the Corporate Governance in the interest of this Nation the urgent directions needed for the Corporate Governance of the

companies registered with Ministry of Corporate Affairs. The applicant has raised the issue of better Corporate Governance before the ICSI and the ICSI have also made several representations against the recent notification dated 03.01.2020 with effect from 01.04.2020 and severe protest has taken place and resentment of the members. The applicant has covered all the aspects in the synopsis and List of dated and events.

- (ii) The applicant by profession is a Company Secretary and is concerned with the outcome and impact of the amended Rule 8A of the Act and subsequently filed present representation. The applicant is working in private sector at a position of Executive Vice President, Corporate Affairs and Company Secretary and his this representation and initiatives is self driven in the interest of the Company Secretaries, common people and in the interest of the Nation.
- (iii) That the MCA on 09.06.2014 notified the Companies (Appointment and Remuneration of Managerial Personnel) 2014 with Rule 8A wherein the Appointment of Company Secretaries in companies not covered Under Rule 8. A company other than a company covered under Rule 8 which has a paid-up capital of five Crore rupees or more, shall have a whole-time company secretary. (Notified on 09.06.2014).
- (iv) The ministry has issued notification dated 21.02.2019 for filing of FORM ACTIVE (Active Company Tagging Identities and Verification) on

or before 25.04.2019. This Form was prepared by the ministry with exhaustive research getting the whereabouts of the companies registered office, KMPs, all statutory officials, auditors, cost auditors, M.D., company secretaries e.t.c. and it was carrying the stringent conditions for compliances and it was too difficult to continue the non compliances. Beside several critical informations controlling the company it was asking the complete PAN and membership number of the whole time company secretary of the company. These stringent provisions have created great barrier in continued non compliances/non-governance.

- (v) The said notification for filing of INC 22A FORM ACTIVE was further extended to 15.06.2019 without any additional fee and thereafter with additional fee of Rs 10,000/- vide notification dated 25.04.2019.
- (vi) Ministry has issued letter dated 17.06.2019 to ICSI (Institute of Company Secretaries of India- A statutory body under the Company Secretaries Act, 1980- Monitoring the profession of company secretaries and Corporate Governance), forwarding the different letters dated 04.04.2019, 09.04.2019, undated letters and emails of 16 individual, firms and companies raising their different concerns before the ministry including grievances of few one about not able to attract company secretary due to high salary, affording salary of company secretary,

exemption for private companies with less turn over, non availability of company secretaries. Out of the above said 16 grievances, 6 grievances were pertaining to non availability of the company secretary in the market. The remaining grievances were raised without any base to evade the compliance of the appointment of company secretaries.

- (vii) The ICSI has addressed individually all the grievances of the stakeholders and have stated that “In view of the aforesaid, keeping in mind the present parameters for appointment of company secretary which are framed by MCA after a lot of public debate and deliberations are absolutely aligned with the present requirements; and therefore, need to be kept intact. Needless to mention that the level of compliance as envisaged by the Government is rising day by day.” It was specifically stated “That, out of total active companies, i.e. approximately, 11 Lakh companies, only 39,805 companies are required to appoint a whole time company secretary. We wish to submit that as on 01<sup>st</sup> July, 2019, ICSI has 58,690 company secretaries on its register out of which only 10,644 are in practice. Accordingly, sufficient numbers of company secretaries are available to serve the corporate India. Further, ICSI through its dedicated placement cell provides placement services to corporates to meet the demand and supply of the company secretaries across the

country.

- (viii) The ministry has further forwarded letter dated 08.07.2019 which was received by the ICSI on 09.07.2019 containing 18 more grievances sent by different stake holders for the comments of the ICSI. Out of the 18 grievances 12 were not related to appointment of company secretaries and it was pertaining to other concerns. Further, out of 18, 4 have raised the grievances that they are not able to find a company secretary or there is a deficit of members in the market. These allegations were completely bogus and it has been raised ulterior motives to continue the non compliances of the express provisions of law.
- (ix) The ICSI has addressed and made its comments individually on all the grievances of the stake holders and reiterated that “We, once again, reiterate that the present parameters for appointment of company secretary which are framed by the MCA after a lot of public debate and deliberations are absolutely aligned with the present requirements; and therefore, need to be kept intact. Needless to mention that the level of compliance as envisaged by the Government is rising day by day.
- (x) That M.C.A. amended the Rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) 2014 in a hasty manner without considering the suggestions and recommendations sent by the statutory body i.e.

ICSI, without estimating the outbreak and consequences of the amendment over members Institute of Companies Secretary and Corporate Governance. The material available on record *prima-facie* shows that amendment passed in a hasty manner compromising the necessary checks and balances

- (xi) The MCA has issued the notification dated 03.01.2020 stating that “Every private company which has a paid up share capital of Rs 10 Crores or more shall have a whole time company secretary. The consequence thereof, all the public and private company having the paid up capital of less than Rs 10 Crores were totally exempted from the appointment of whole time company secretary. As per the report dated 01.01.2015 containing the data as on 31.12.2014, there were 11,532 companies having the paid up capital of Rs 83,376.46 Crores under the bracket of paid up capital of above Rs 5 Crores to Rs 10 Crores. Hence, a big question mark has come on the Corporate Governance of these companies.
- (xii) As the capital limit has increased inspite of the comments and efforts of the ICSI and the members has started questioning the role and responsibilities of the institute and its council members, it has issued a letter to the members stating that “It was because of your institutes continuous involvements and representations, the enhancements in limits has been limited to Rs 10 Crores only and not beyond.”

Further, it was also stated that ICSI is committed provide whole hearted support to its members and students and will take all necessary measures as may be required. It has also appealed to the members and students “We earnestly appeal all our members and students not to post any derogatory or defamatory remarks against the regulators, stakeholders or Institute on the social media or by any other means, keeping in view its far reaching impact on the credibility of the profession.” That the Institute has threatened the members and the students from making the protests and questioning the failure of the ICSI and its councils and have restricted the freedom of speech and expression.

- (xiii) The ICSI has again issued the advisory to all the regional council members, chapters and others stating that “It is advised to refrain from making any derogatory or defamatory comment against the MCA or the ICSI. Further you are advised from refrain the facilitating the demonstration by the members and the students. Also the regional councils/ Chapters/ Units are advised not to make any representation in this regard at their end directly to any authority /forum, as the institute has already in process of once again taking up the matter with the MCA. So by these advisory again the members were restricted from raising the voice on the said change and protest thereof.
- (xiv) That ICSI being aggrieved and dissatisfied with the amendment of Rule 8A sent a representation with



it's suggestions vide its letter dated 10.01.2020 and concluded by stating that “...*the companies have proper and significant business operations which triggers compliance with various laws. In absence of services of Whole Time Company Secretaries, these active companies may be exposed to greater regulatory risk and non-compliance. Further in such companies, public interest is also involved and following good governance practices becomes more significant....*”.

- (xv) The ICSI has written the letter to the MCA stating that the said “Amendment has caused a apprehension in the mind of our members and students and there has been lots of resentment in the fraternity across the country.” The ICSI has requested for further amendment in to the rule taking into account the following suggestions:

**SUGGESTION -1:**

Every company which has a paid up share capital of more than Rs 5 Crores and up to Rs 10 Crores and

- a. Turnover of hundred Crores rupees or more; or
- b. Outstanding loans or borrowings from banks or public financial institutions of one hundred crores rupees or more;

Shall have a Whole Time Company Secretary.

Explanation- For the purpose of this sub rule, the paid up share capital, turnover, or outstanding loans or borrowings as the case may be, existing on the last date of latest audited financial statement may be taken into account.

Or ALTERNATE SUGGESTION -2:

Every Company which has:

- a. A paid up share capital of ten crores rupees or more;
- b. Turnover of one hundred crores rupees or more; or
- c. Outstanding loans or borrowings from banks or public financial institutions of one hundred crores rupees or more.
- d. Shall have a Whole Time Company Secretary

Explanation:- For the purpose of this sub rule, the paid up share capital, turnover, or outstanding loans or borrowings as the case may be, existing on the last date of latest audited financial statement may be taken into account.

That the applicant not being satisfied by the reasoning and the submissions of the institute and its officials have requested for open house sessions or presentation before the Council for the strong submission before the Ministry. However, the said letter remains un-responded from the ICSI.

- (xvi) However, the ICSI have re approached for the further amendment in the rule vide letter dated 03<sup>rd</sup> February, 2020 with the prayer that to kindly consider further amendment in Rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2013, taking into consideration inserting the following in place of the existing provision:

“Every company which has:

- a. A paid up share capital of ten crores rupees or more; or

- b. Net worth of one hundred crores rupees or more; or
  - c. Outstanding loans or borrowings from banks or public financial institutions of one hundred crores rupees or more; or
  - d. Turnover of two hundred fifty crore rupees or more
- Shall have a Whole Time Company Secretary.

Explanation:- For the purpose of this rule, the paid up share capital, net worth, outstanding loans or borrowings or turnover as the case may be existing on the last date of latest audited financial statement may be taken into account.

Every company which ceases to be a company covered under Rule 8A for three consecutive financial years shall not be required to appoint company secretary till such time it meets the criteria specified in Rule 8A.

(xvii) That impact of impugned notification can also be seen by the act of one of the defaulter company who sent grievance to the MCA. i.e. M/s. Kaytee Corp. Pvt Ltd. who for the first time since 2013 appointed a C.S. on 10.06.2019 and subsequently removed. The MCA current status shows CS resigned on 01.02.2020 as per the Form DIR 12. It is pertinent to say that unlike this entity all other entity having paid up capital between 5 cr. to 10 cr. will also remove already appointed C.S.

(xviii) That in view of the above facts and circumstances the said Notification is bad in law with Constitutional vires. There is manifest arbitrariness in the said Notification

In the light of the above your good self is requested to consider

the relief as sought for in the present representation including withdrawal of the said notification dated 03.01.2020 of the Ministry of Corporate Affairs which is effective from 01.04.2020 and to continue with the earlier Rule 8A. Further, no exemptions should be granted on the basis of paid-up capital or the size of the company compromising with the corporate governance and the compliance of the Companies Act, 2013 and the other corporate laws should be ensured. That a robust corporate governance mechanism should be developed to ensure compliances by the corporate entities and the effective actions against the defaulters in the interest of the common public and in the interest of the Nation.

Thanking You,

Yours Truly,

Suman Kumar  
FCS- 5824  
22/11, Second Floor (Back Side),  
West Patel Nagar, New Delhi – 110008.  
Email Id: suman22121975@gmail.com  
Mob: 9958299558.



TRUE COPY



3. That in the present pandemic situation and due to Lockdown throughout the Country the petitioner could not get the affidavit in support of the Writ Petition attested by a Notary Public hence seeks exemption from filing the notarized affidavit in support of the PIL petition. The petitioner further assures that when the lockdown is revoked and the situation becomes normal the petitioner will file the notarised affidavit in support of the PIL Petition.
4. That under such circumstances this application be allowed, otherwise grave prejudice will be caused to the petitioners.

#### PRAYER

It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- a. Allow this application and exempt the applicant/ petitioner from filing the notarized affidavit in support of the PIL Petition; And /or
- b. Pass any other or further orders as may be deemed fit and proper in the facts and circumstances of this case

AND FOR THIS ACT OF KINDNESS THE PETITIONERS AS IN DUTY BOUND SHALL EVER PRAY.

Filed By:



Pranab Prakash  
Advocate for Petitioners

Drawn by: Shashank Deo Sudhi, Advocate  
Drawn on : 17.07.2020  
Filed On: 17.07.2020



3. The Fundamental Rights of the Petitioner/Applicant herein has been violated under Art. (s) 14 and 21 of the Constitution since he now is a class within a class as a result of the said Notification, which is unconstitutional and his right will be affected.
4. That the Notification is bad in law, it has been clarified that the amendment introduced therein suffer from manifest arbitrariness.
5. That the present Notification violates Art14 of the Constitution in as much as that it attempts to create a “class within a class”.
6. That from the very face of it, the Notification is unconstitutional, capricious, and arbitrary. Further, if the Notification is brought into operation, it would severely hamper public money at large.
7. That not staying the present Notification would severely hamper the economy and the Company Secretaries.
8. That the Petitioner/Applicant herein has a strong case on merits and same ought not to be defeated by continued operation of the Notification.
9. That the balance of convenience lies in favour of the Petitioner/Applicant herein.
10. That granting of stay would benefit Company Secretaries already engaged within Companies having paid up capital more than 5 Crore rupees, but not granting the stay would not affect the Respondents in anyway.



**PRAYER**

IN LIGHT OF THE SUBMISSIONS MADE HEREINABOVE  
IN THE APPLICATION, IT IS PRAYED THAT THIS  
HON'BLE COURT MAY BE PLEASED TO:

- (a) Grant ex-parte and ad-interim stay against the notification dated 03.01.2020 of Respondent N0.1 from the operation of Rule 8A of Companies (Appointment and Remuneration Of Managerial Personnel) Rules, 2014; and/or
- (b) Pass any other order (s) and direction (s) that this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the interest of justice.

AND FOR THIS ACT OF KINDNESS THE PETITIONERS AS  
IN DUTY BOUND SHALL EVER PRAY.

Filed By:



Pranab Prakash  
Advocate for Petitioners

Drawn by: Shashank Deo Sudhi, Advocate

Drawn on : 17.07.2020

Filed On: 17.07.2020

THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION  
(CIVIL EXTRAORDINARY JURISDICTION)

WP (PIL) NO. \_\_\_\_ OF 2020.

IN THE MATTER OF:

SUMAN KUMAR

...PETITIONER

VERSUS

UNION OF INDIA & ORS.

...RESPONDENTS

V A K A L A T N A M A

I, Suman Kumar, aged about 45 years, S/o Late Sh. Arjun Prasad Singh, R/o 22/11, Second Floor, Near Patel Park, West Patel Nagar, New Delhi-110008, do hereby appoint and retain and Advocates of Supreme Court of India to act and appear for me in the above Petition on my behalf to conduct and prosecute (or defend) or withdraw the same and all proceedings that may be taken in respect of any application connected with the same or any decree or order passed therein, including proceedings in taxation and application for Review, to file and obtain return of documents and to deposit and receive money on my behalf in the said Petition and in application for Review and to represent me and to take all necessary steps on my/our behalf in the above matter. I agree to ratify all acts done by the aforesaid Advocate in pursuance of this Authority.

Dated this the \_\_\_\_ day of July 2020.

PETITIONER

Accepted, Identified & Certified

PRAKASH PRANAB  
[Pranab Prakash]

Digitally signed by  
PRAKASH PRANAB  
Date: 2020.07.16 20:30:25  
+05'30'

Advocate-on-record  
Advocate for the Petitioners  
Chamber 20-A (R.K Garg Block)  
Supreme Court of India  
Code No. 2660

**MEMO OF APPEARANCE**

To,  
The Registrar,  
Supreme Court of India,  
New Delhi.

Sir,

Please enter my appearance on behalf of the Petitioner(s)/Appellant(s)/ Respondent(s)/ Caveator/Opposite Parties/intervenor in the matter mentioned.

Yours faithfully,

PRAKASH PRANAB  
[Pranab Prakash]

Digitally signed by PRAKASH PRANAB  
Date: 2020.07.16 20:31:08 +05'30'  
Advocate-on-record  
Advocate for the Petitioner  
Chamber 20-A (R.K Garg Block)  
Supreme Court of India  
Code No.2660

Date: 17.07.2020