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Overview of New Competition Law: Competition Commission of India

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The present era of economic reforms is encouraging budding entrepreneurs and start-ups across the globe and the world is contracting into a local global market as a result of which India is witnessing immense economic activity and aggressive competition. This calls for a law so that competition may be protected and monopoly may be curbed. The Monopolistic and Restrictive Trade Practices Act (MRTP) Act, 1969 having its origin in Articles 38 and 39 of Indian Constitution strives to promote the welfare of people by securing and protecting, as effectively, as may be, a social order in which justice-social, economic and political- to inform all the institutions of national life. However, as the MRTP Act had become obsolete pertaining to latest developments in international arena relating to Competition laws, Competition Act, 2002 came into force to replace the MRTP Act with the purpose of laying down a competition law regime which meets and suits the demands of changed economic scenario in India and abroad. The article aims to discuss the evolution of new competition law and its provision, in India.

❖ Introduction

Existence of competition has been recognised globally as the best means of ensuring that consumers have access to wide range of products and services and that too at most competitive price. In order to provide best quality products, manufacturers will bring innovations in their product in terms of quality and reasonable price which can meet the demand of public. The term ‘competition’ refers to a process whereby the commercial enterprises compete with each other to win over/secure customers for their products and services and in the process outsmart each other and even eliminate the rivals. In fact, an effective competitive business environment, duly supported by competition law and policy, is one of the essential elements of a thriving market economy and it benefits the customers by allowing them to access wider range of better products at lower prices which unfortunately cannot be a possibility if monopoly were allowed to prevail.

In the present era of liberalization ushered in by technological advancements, where technology is touching many faces in the world of cosmic complex diversity with numerous quandaries and predicaments in the landscape of competition law, India did feel the pulse in early 1990's to liberalise its policies to keep pace with emerging global economies. With the advent of pervasive economic reforms in 1991, the law was found inadequate for fostering competition in markets. It is disheartening to note that India ranks 55th in the Global Competitiveness Index among 140 economies in world and ironically no member of South Asian Association for Regional Cooperation (SAARC) features in top 50 while Switzerland, Singapore and United States remain the top three world's most competitive economies (according to The Global Competitiveness Report 2015–16 published by World Economic Forum). Moreover, a sharp and acrimonious criticism over ineffectiveness of the erstwhile Monopolies and Restrictive Trade Practices Act, 1969 ("MRTP Act") and its failure in curbing concentration of economic power or in regulating diverse monopolistic, restrictive and unfair trade practices, in fact, added fuel to the fire.

With a view to fine tune the provisions of Monopolies and Restrictive Trade Practices Act, 1969 ("repealed MRTP Act") and to replace with a new competition regime of global standards to meet present day needs in field of competition, a high-level committee was set up in October 1999 under the Chairmanship of SVS Raghavan to make necessary recommendations on competition policy and related Laws. The Committee submitted its report in May 2000, which formed the basis of a draft Competition Bill, 2002. Finally, Bill got Presidential assent on 13thJanuary, 2003, leading to repeal MRTP Act, 1969 and dissolve the MRTP Commission. As envisaged by Competition Act, 2002 ('The Act"), keeping in view of economic development of the country, its objectives inter alia, include, to establish Competition Commission of India ("CCI") to prevent practices having adverse effect on competition; to promote and sustain competition in markets; to protect the interests of consumers; and to ensure freedom of trade carried on by other participants in markets, in India.

❖ ***Why Competition? –Its Importance***

It is argued that self-interest is the driving force behind economic activity and the market system forces it to produce a behavior that benefits others (as per Adam Smith). Though self-interest sometimes has negative connotations but most of the times private pursuance of self-interest is balanced by competitive forces arising out of fair competition. Thus, a societal benefit is derived through a process of competition among self-interest driven enterprises. Adam Smith described these complimentary forces of self-interest and competition as 'invisible hand' that guides the resources towards their most efficient use. Accordingly, the Classical School views competition as the ordering force of a market. They believed that through competition, resources are driven towards their most productive use and through competition prices are forced to the lowest level which is sustainable over long run (McNulty, 1968).

i. Competition is a crucial factor in driving the growth of businesses by bolstering their productivity and increasing their competitiveness as it makes goods and services available at competitive prices. In this way, it not only benefits consumers but also producers as they themselves are consumers of inputs because if prices of inputs available to them are higher compared to competitors in other markets business is likely to face difficulty in maintaining market share.

ii. It affects productivity and efficiency of businesses (Alesina et al (2005); Aghion and Griffith (2005)). It engenders the firms to innovate as they are aware that their competitors are constantly trying to reduce cost. It ensures that more productive firms increase their market at the expense of less productive firms as a result of which low productive firms are pushed out of market and are replaced by higher productive firms which pushes the market players to produce goods of higher quality or provide better services while keeping a check on prices.

iii. Competition drives innovation as firms, in the race to outperform their competitors aim to develop new technologies, products and services, however without competition, there would be lack of innovation and economy would lag behind others and would lose international competitiveness.

iv. It ensures that competitive process is unbiased as it forces decisions to be based on market factors and makes the resources flow away from weak and uncompetitive sectors to the strongest and most competitive one. In this way, the very operation of competitive process helps in achieving the most competitive outcome possible.

v. In any civilized society governed by law, there prevails a well-integrated relationship between producers, government and the consumers. So far the relationship remains balanced, it benefits all concerned in following ways:

a. **Entrepreneur:** Competition promotes innovation, encourages excellence, identifies weaknesses/strengths, helps to identify focus areas, keeps alert for services, helps to identify potential threats, promotes research and development, develop strength for global competition.

b. **Government:** Intra and inter industry comparison helps to formulate policies, can help to concentrate in key sovereign functions, promote exports, earn foreign exchange, balance growth of business activities, tax and revenue collection, laying down minimum compliance norms, detect and discourage unfair competition.

c. **Consumer:** Competition ensures better services and choice at affordable prices, suitable buying decisions by comparing products, combat exploitation by taking balanced prudent decision in consumer disputes for comparison, promotes consumer awareness collectively.

vi. Global Competitiveness Report brought out by 'World Economic Forum' every year, highlights the importance of competition and innovation in fueling economic Growth. It classified the economies in three stages from stage 1 to stage 3 with two intermediate transition stages. It showed that as the economy grows from factor-driven economy to innovation driven economy the per capita income of country grows from the range of $ 2000 to more than $17000. This clearly emphasizes that GDP of a country is strongly dependent on innovation which is spurred by fair competition.

vii. Some Studies concluded that competition reforms lead to increase in economic performance. Kee and Hoekman (2007) observed that number of domestic firms increased by 7.2% in sectors in which competition law was effectively enforced. In Australia, ushering of competition policy reforms boosted GDP by 2.5%,or US$20 billion, as a result of higher productivity and lower prices during 1990s (Australian Productivity Commission 2005). Similarly, in case of United Kingdom, enforcement of competition law led toUS$112 million a year in direct consumer saving, thus increasing consumer welfare (U.K. Office of Fair Trading, 2010). Werden (2008) found that effective cartel enforcement alone increased consumer savings from cartel enforcement in United States to aboutUS$1.85 billion between 2000 and 2007.

Business enterprise, in their zeal to increase their profits may indulge in practices which hinders competition in the market. Given the tendencies of business to undermine the process of competition, the enactment of an economically sound competition law and the establishment of a competition regulator is imperative.

❖ *Competition Laws in India*

Competition Law in India has a root under Article 38 and 39 of the Constitution of India. These Articles constitutes part of the Directive Principles of State Policy. Articles 38 and 39 of Constitution of India provides, inter alia, that the State shall strive to promote welfare of people by securing and protecting as effectively, as it may, a social order in which justice- social, economic and political – shall inform all the institutions of national life, and the State shall, in particular, direct its policy towards securing that:

1. That, the ownership and control of material resources of community are so distributed as best to sub-serve the common good; and
2. That, the operation of economic system does not result in concentration of wealth and means of production to the common detriment.

Taking guidance under Directive Principles of State Policy, the first Indian Competition Law was enacted in 1969 and was named Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act). The principal objectives sought to be achieved through mechanism of MRTP Act were:

i. Prevention of concentration of economic power to the common detriment;
ii. Control of monopolies;
iii. Prohibition of Monopolistic Trade Practices;
iv. Prohibition of Restrictive Trade Practices;
v. Prohibition of Unfair Trade Practices.

The MRTP Act, 1969 was amended in 1991 as a part of new economic reforms introduced by then Government. Out of five objectives mentioned above, the first two had been deemphasized. With the restructuring of MRTP Act through 1991 amendments, the thrust thereof is on curbing Monopolistic, Restrictive and Unfair Trade Practices with a view to preserving competition in economy and safeguarding the interest of consumers by providing them protection against false or misleading advertisements and/or deceptive trade practices. Size as a factor of concern, to discourage concentration of economic power had been given up.

The constitutional validity of this Act was challenged and while upholding the same, Supreme Court observed:

"The basic feature and paramount consideration which pervades throughout the State are the public interest, the common good and to keep a watch and control on the operation of economic system of country. The Governments act in public interest. Public interest is writ large in every act and function of Government."

Every legislation has to stand the test of time and needs to be critically appraised in context of its actual contribution in achieving the objects for its enactment. By that test, MRTP Act was found to be ineffective or rather having negative impact on the growth of industries and curbing monopolies.

Contemporary changes also made it virtually obsolete. In 1991, India decided to be a trendsetter in global reforms which required liberalisation of policies. The MRTP Act was solely concentrating on the size of industrial undertaking. The deterrent provisions dealing with offences in some cases negated even principles of natural justice. There was strict and rigid registration procedure. Dominance by itself was treated as an indicator of monopoly and hence sought to be curbed. There was an unworkable concept called "group" under the MRTP law.

In view of policy shift from curbing monopolies to promoting competition, there was a need to repeal the MRTP Act and substitute it with a legislation which can address the urges and requirements of changed economic and international scenario. The Competition Act hence was the need of day and was enacted in 2002 after considerable deliberation.

❖ *Evolution of New Competition Law: CCI*

To strive for competition, the government needs to enable competition rather than muting it through policy induced interventions. The process of competition is not only affected by policies and statutes; it is also affected by market distortions caused by anticompetitive practices. Given the tendencies of business to undermine the process of competition, the enactment of an economically sound competition law and the establishment of a competition regulator is imperative. Consequently, jurisdictions all over the world have come up with antitrust regime. In India also, the competition regime started with enactment of Competition Act, 2002 and Competition Commission of India is bestowed with the authority of enforcing it. The competition law promotes and enforces competition culture in the economy.

In October 1999, Government of India a high level committee on Competition Policy and Competition Law to advice a modern competition law in India in line with international developments on whose recommendation, the Competition Act, 2002 was enacted keeping in view economic development of the Country and to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interest of consumers and to ensure freedom of trade carried on by other participants in markets in India, the legislation is introduced. The law tries to strike a balance between "freedom of trade" and an over-domination which eliminates competition. As per the Act, anti-competitive agreements and abuse of dominance are considered as potential impediments to free and fair competition in the markets and penalty is imposed wherever the Commission concludes that the enterprise has/ had indulged in anticompetitive practices resulting in appreciable adverse effect on competition (AAEC). The Commission also regulates combinations which aim at ex-ante screening of mergers and acquisitions for possible anti-competitive effects.

❖ *Prohibition of Anti-Competitive Agreements:*

Sub-section (1) of Section 3 of Competition Law prohibits certain agreements and treats them as anti-competitive. Since they are void, they cannot be enforced or be enforceable. The practices carried out by or decisions taken by any association of enterprises engaged in identical or similar trade of goods or provision of services have been covered.

i. Cartel, ie. limiting, controlling or attempting to control the production, distribution, sale or price of trade in goods. The law didn't approve it due to fact that it benefits the producers, sellers, distributors, traders or service providers and puts the consumer to disadvantage.

ii. Market sharing agreements by allocating geographical area of market, type of goods or services or number of customers in the market or any other similar way. It is disapproved as the enterprises amongst themselves not only control the markets but even the production to create artificial scarcity and exploit consumers.

iii. Rigging or collusive bidding, i.e. adversely affecting or manipulating the bidding process. Here the enterprises engaged in identical or similar production of trading or goods by an agreement corner the bid among themselves.

iv. Tie-in agreement, ie. imposing condition against the wish of purchaser. It is prohibited as it requires a purchaser of goods as a condition of such purchase to also purchase some other goods which as such he does not want to buy.

v. Exclusive supply and distribution agreement, ie, restricting the purchaser to deal in any goods or withhold output of supply. It restricts the purchaser in course of his trade from acquiring or dealing in any other product or limits, restricts or withholds the output to any area or market.

vi. Refusal to deal with persons other than those covered under agreement, ie, it restricts by any methods the persons or classes of persons from whom goods will be purchased or to whom goods will be sold.

vii. Resale price maintenance stipulating that the prices to be charged on resale by purchaser shall be the prices stipulated by the seller, ie. the condition deprives the ultimate consumers to purchase the goods at a price lesser than stipulated by the producer even if the intervening seller wants to do so.

Cartelization of cement industry heavily punished. The cement manufacturer where 12 major cement companies had 75% of total capacity in India increased cement prices. The Director General conducted economic analysis of price data resulting in price parallelism. There was deliberate act of shortage of production and supplies by the cement manufacturers. The Commission imposed a penalty of approximately Rs. 6000 crores (USD 1.1 billion) as they were guilty of cartelization. Additional penalty was imposed on Cement Manufacturers Association.
The Competition Appellate Tribunal has intervened in matter and directed CCI to hear the matter again following just and fair procedure and pass fresh orders.

❖ *Horizontal & Vertical Agreements*

The agreements wherein business firms otherwise competing with each other in the same field of activity decide to cooperate with each other and the ultimate objective is to maximize profits of parties to such agreement and has ultimate effect of reducing competition or exploiting the consumers. The Supreme Court has observed that swift and accurate proof in such cases is not required and their anti-competitive potential justifies their facial invalidation even if pro-competitive justifications are offered for the same by the concerned parties. Section 3(3) of Competition Act lays down a statutory presumption that such agreements have an “appreciable adverse effect” on competition. As against this, vertical agreements take place when enterprises are involved at different stages or levels of production change in different markets in respect of production, supply, distribution, storage, sale or trade in goods or provisions of services. In effect, vertical agreements are more of condition-fixing agreements connected with fixing of price. The key criteria for application of law is whether the restraints which agreements create has the effect of foreclosing markets to manufacturers or retailers and does it also have the effect of reducing new entry by other participants on competitive terms.

- ***Abuse of Dominant Position:***

Dominance refers to a position of strength which enables an enterprise to operate independently of competitive forces or to affect its competitors or the market in its favour. Abuse of dominant position impedes fair competition between firms, exploits consumers and makes it difficult for the other players to compete with dominant undertaking on merit. Abuse of dominant position includes:

i. Imposing unfair conditions or prices,
ii. Predatory pricing,
iii. Limiting production/market or technical development,
iv. Creating barriers to entry,
v. Applying dissimilar conditions to similar transactions,
vi. Denying market access, and
vii. Using dominant position in one market to gain advantages in another market.

In case of Oberoi Cars (P.) Ltd. v. Imperial Housing Ventures (P.) Ltd, CCI held that where there were many other real estate developers operating and competing with opposite party in relevant market for provision of services for development and sale of residential apartments/flats in Noida and Greater Noida, opposite party was not dominant in relevant market and, thus, no case of abuse of dominance was made out against opposite party.

- ***Regulation of Combinations:***

A combination is required to be notified to Competition Commission of India for its approval. Broadly, combination includes acquisition of control, shares, voting rights or assets,
acquisition of control by a person over an enterprise where such person has control over another enterprise engaged in competing businesses, and mergers and amalgamations between or amongst enterprises where these exceed the thresholds specified in Act in terms of assets or turnover.

Thresholds for filing Notice				
		Assets		**Turnover**
Enterpris	**India**	>2000 INR crore		>6000 INR crore

e Level	**Worldwide with India leg**	>USD 1 bn with atleast >1000 INR crore in India	**OR**	>USD 3 bn with atleast >3000 INR crore in India
		OR		
Group Level	**India**	>8000 INR crore	**OR**	>24000 INR crore
	Worldwide with India leg	>USD 4 bn with atleast >1000 INR crore in India		>USD 12 bn with atleast >3000 INR crore in India

If a combination causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India, it is prohibited and can be scrutinized by the Commission. The Act provides for thresholds in terms of assets/turnover for mandatory notification of combination to the Commission. These threshold limits are subject to revision every two years by government, in consultation with Commission through notification. Vide notification S.O. 675 (E) dated 4th March, 2016, the value of assets and turnover has been enhanced by 100% for notification of combination to CCI.

Vide Notification S.O 674(E) dated 4th March, 2016, Central Government has exempted an enterprise, whose control, shares, voting rights or assets are being acquired if it has either assets of the value of not more than Rs. 350 crore in India or turnover of not more than Rs. 1000 crore in India from the provisions of ‘Combinations’ (section 5) of the Act for a period of five years from the date of publication of notification in official gazette.

Acquisition of *Etihad Airways PJSC/Jet Airways India Limited- [C-2013/05/122]*

The proposed combination related to acquisition of 24% equity interest in Jet Airways India Limited (“Jet”) by Etihad Airways PJSC (“Etihad”) and in relation to all rights and benefits which the parties commercially agreed upon. CCI observed that Jet and Etihad had entered into a composite combination with the common/ultimate objective of enhancing their airline business through joint initiatives. The effect of these agreements established Etihad’s joint control over Jet, more particularly over the assets and operations of Jet. CCI concluded that proposed deal would change the competitive landscape in a way that is most likely to benefit to Indian aviation passenger. The CCI thus approved proposed acquisition holding that it does not lead to any appreciable adverse effect on competition in the market.

Competition Advocacy: Competition Advocacy is defined as the ability of competition office to provide advice, influence and participate in government economic and regulatory policies in order to promote more competitive industry structure, firm behavior and market performance (World Bank). According to the International Competition Network (ICN), Competition advocacy refers to those activities conducted by a competition authority related to promotion of a competitive economic environment by means of non-enforcement mechanisms, mainly through its relationship with other Governmental entities and by increasing public awareness of benefits of competition.

There is a direct relationship between competition advocacy and enforcement of a competition law and this connection is especially strong in transition and developing economies where an appropriate understanding or appreciation of merits of competitive market economic systems is often lacking. Advocacy role takes the Commission beyond being merely an 'enforcing authority' to be 'an advocate of competition' and to take suitable non-enforceable measures with an aim to create and strengthen awareness of the role of competition among market players and stakeholders, thereby encouraging compliance and reducing the need for enforcement action on erring enterprises.

The provision is consultative in nature. It aims at changing particular public policy and taking a position on specific issues by influencing or supporting a particular idea or policy. It helps in securing willingness and acceptability of proposed policy and law. The Act stipulates that opinion given by Commission shall not be binding upon the Central Govt. or State Govt. in formulating such policy. In addition to opinion, even spread of education and awareness through workshops and seminars also is included within the scope of advocacy initiatives.

❖ ***CONCLUSION***

Competition law aims to protect the interest of consumer while simultaneously protecting the rights of market players to ensure economic justice. No business enterprise in India can afford to ignore the provisions of Competition Act since the CCI has passed stringent orders with exceptionally heavy penalties against companies engaging in anti-competitive agreements or found to be abusing their dominant position in the market. The time has come for professionals to advise the management of companies to adapt their marketing policies and strategies so that they are not found foul with by the CCI.

A. G.S.R.258(E) Companies (Indian Accounting Standards) (Amendment) Rule, 2017 Dated 17.03.2017

In exercise of the powers conferred by section 133 read with section 469 of the Companies Act, 2013 (18 of 2013) and sub-section (1) of section 210A of the Companies Act, 1956 (1 of 1956), the Central Government, in consultation with the National Advisory Committee on Accounting Standards, hereby makes the following rules further to amend the Companies (Indian Accounting Standards) Rules, 2015, namely:—

1. Short title and commencement.-

(1) These rules may be called the Companies (Indian Accounting Standards) (Amendment) Rules, 2017.

(2) They shall come into force on the 1st day of April, 2017.

2. In the principal rules, in the "Annexure", under the heading "B. Indian Accounting Standards (Ind AS)" in "Indian Accounting Standard (Ind AS) 102, Share-based Payment", -

(i) for paragraph 19, the following paragraph shall be substituted, namely:-

"19 A grant of equity instruments might be conditional upon satisfying specified vesting conditions. For example, a grant of shares or share options to an employee is typically conditional on the employee remaining in the entity's employment for a specified period of time. There might be performance conditions that must be satisfied, such as the entity achieving a specified growth in profit or a specified increase in the entity's share price. Vesting conditions, other than market conditions, shall not be taken into account when estimating the fair value of the shares or share options at the measurement date, Instead, vesting conditions, other than market conditions, shall be taken into account by adjusting the number of equity instruments included in the measurement of the transaction amount so that, ultimately, the amount recognised for goods or services received as consideration for the equity instruments granted shall be based on the number of equity instruments that eventually vest. Hence, on a cumulative basis, no amount is recognised for goods or services received if the equity instruments granted do not vest because of failure to satisfy a vesting condition, other than a market condition, for example, the counterparty fails to complete a specified service period, or a performance condition is not satisfied, subject to the requirements of paragraph 21. "

(ii) for paragraph 30, the following paragraph shall be substituted, namely:-

"30 For cash-settled share-based payment transactions, the entity shall measure the goods or services acquired and the liability incurred at the fair value of the liability, subject to the requirements of paragraphs 31–33D. Until the liability is settled, the entity shall remeasure the fair value of the liability at the end of each reporting period and at the date of settlement, with any changes in fair value recognised in profit or loss for the period. "

(iii) for paragraph 31, the following paragraph shall be substituted, namely:-

"31 For example, an entity might grant share appreciation rights to employees as part of their remuneration package, whereby the employees will become entitled to a future cash payment (rather than an equity instrument), based on the increase in the entity's share price from a specified level over a specified period of time. Alternatively, an entity might grant to its employees a right to receive a future cash payment by granting to them a right to shares (including shares to be issued upon the exercise of share options) that are redeemable, either mandatorily (for example, upon cessation of employment) or at the employee's option. These arrangements are examples of cash-settled share-based payment transactions. Share appreciation rights are used to illustrate some of the requirements in paragraphs 32–33D; however, the requirements in those paragraphs apply to all cash-settled share-based payment transactions. "

(iv) for paragraph 33, the following paragraph shall be substituted, namely:-

"33 The liability shall be measured, initially and at the end of each reporting period until settled, at the fair value of the share appreciation rights, by applying an option pricing model, taking into account the terms and conditions on which the share appreciation rights were granted, and the extent to which the employees have rendered service to date subject to the requirements of paragraphs 33A–33D. An entity might modify the terms and conditions on which a cash-settled share-based payment is granted. Guidance for a modification of a share-based payment transaction that changes its classification from cash-settled to equity-settled is given in paragraphs B44A–B44C in Appendix B."

(v) after paragraph 33, the following paragraphs and headings shall be inserted, namely:-

"Treatment of vesting and non-vesting conditions

33AA cash-settled share-based payment transaction might be conditional upon satisfying specified vesting conditions. There might be performance conditions that must be satisfied, such as the entity achieving a specified growth in profit or a specified increase in the entity's share price. Vesting conditions, other than market conditions, shall not be taken into account when estimating the fair value of the cash-settled sharebased payment at the measurement date. Instead, vesting conditions, other than market conditions, shall be taken into account by adjusting the number of awards included in the measurement of the liability arising from the transaction.

33B To apply the requirements in paragraph 33A, the entity shall recognise an amount for the goods or services received during the vesting period. That amount shall be based on the best available estimate of the number of awards that are expected to vest. The entity shall revise that estimate, if necessary, if subsequent information indicates that the number of awards that are expected to vest differs from previous estimates. On the vesting date, the entity shall revise the estimate to equal the number of awards that ultimately vested.

33C Market conditions, such as a target share price upon which vesting (or exercisability) is conditioned, as well as non-vesting conditions, shall be taken into account when estimating the fair value of the cash settled share-based payment granted and when remeasuring the fair value at the end of each reporting period and at the date of settlement.

33D As a result of applying paragraphs 30–33C, the cumulative amount ultimately recognised for goods or services received as consideration for the cash-settled share-based payment is equal to the cash that is paid.

Share-based payment transactions with a net settlement feature for withholding tax obligations

33E Tax laws or regulations may oblige an entity to withhold an amount for an employee's tax obligation associated with a share-based payment and transfer that amount, normally in cash, to the tax authority on the employee's behalf. To fulfill this obligation, the terms of the share-based payment arrangement may permit or require the entity to withhold the number of equity instruments equal to the monetary value of the employee's tax obligation from the total number of equity instruments that otherwise would have been issued to the employee upon exercise (or vesting) of the share-based payment (i.e. the share-based payment arrangement has a 'net settlement feature').

33F As an exception to the requirements in paragraph 34, the transaction described in paragraph 33E shall be classified in its entirety as an equity-settled share-based payment transaction if it would have been so classified in the absence of the net settlement feature.

33G The entity applies paragraph 29 of this Standard to account for the withholding of shares to fund the payment to the tax authority in respect of the employee's tax obligation associated with the share-based payment. Therefore, the payment made shall be accounted for as a deduction from equity for the shares withheld, except to the extent that the payment exceeds the fair value at the net settlement date of the equity instruments withheld.

33H The exception in paragraph 33F does not apply to:

(a) a share-based payment arrangement with a net settlement feature for which there is no obligation on the entity under tax laws or regulations to withhold an amount for an employee's tax obligation associated with that share-based payment; or

(b) any equity instruments that the entity withholds in excess of the employee's tax obligation associated with the share-based payment (i.e. the entity withheld an amount of shares that exceeds the monetary value of the employee's tax obligation). Such excess shares withheld shall be accounted for as a cashsettled share-based payment when this amount is paid in cash (or other assets) to the employee."

(vi) for paragraph 52, the following paragraph shall be substituted, namely:-

"52 If the information required to be disclosed by this Standard does not satisfy the principles in paragraphs 44, 46 and 50, the entity shall disclose such additional information as is necessary to satisfy them. For example, if an entity has classified any share-based payment transactions as equity-settled in accordance with paragraph 33F, the entity shall disclose an estimate of the amount that it expects to transfer to the tax authority to settle the employee's tax obligation when it is necessary to inform users about the future cash flow effects associated with the share-based payment arrangement."

(vii) after paragraph 52, the following paragraphs and headings shall be inserted, namely:-

"Transitional provisions

53-59 [Refer Appendix 1]

59 A An entity shall apply the amendments in paragraphs 30–31, 33–33H and B44A–B44C as set out below. Prior periods shall not be restated.

(a) The amendments in paragraphs B44A–B44C apply only to modifications that occur on or after the date that an entity first applies the amendments.

(b) The amendments in paragraphs 30–31 and 33–33D apply to share-based payment transactions that are unvested at the date that an entity first applies the amendments and to share-based payment transactions with a grant date on or after the date that an entity first applies the amendments. For unvested share-based payment transactions granted prior to the date that an entity first applies the amendments, an entity shall remeasure the liability at that date and recognise the effect of the remeasurement in opening retained earnings (or other component of equity, as appropriate) of the reporting period in which the amendments are first applied.

(c) The amendments in paragraphs 33E–33H and the amendment to paragraph 52 apply to share-based payment transactions that are unvested (or vested but unexercised), at the date that an entity first applies the amendments and to share-based payment transactions with a grant date on or after the date that an entity first applies the amendments. For unvested (or vested but unexercised) sharebased payment transactions (or components thereof) that were previously classified as cash-settled share-based payments but now are classified as equity-settled in accordance with the amendments, an entity shall reclassify the carrying value of the share-based payment liability to equity at the date that it first applies the amendments.

59B Notwithstanding the requirements in paragraph 59A, an entity may apply the amendments in paragraph 63D retrospectively, in accordance with Ind AS 8, Accounting Policies, Changes in Accounting Estimates and Errors, if and only if it is possible without hindsight. If an entity elects retrospective application, it must do so for all of the amendments made by Amendments to Classification and Measurement of Share-based Payment Transactions under Ind AS 102.

Effective date

60-63C [Refer Appendix 1]

63D Amendments to Classification and Measurement of Share-based Payment Transactions under Ind AS 102 amended paragraphs 19, 30–31, 33 and 52 and added paragraphs 33A–33H, 59A–59B, 63D and B44A–B44C and their related headings. An entity shall apply those amendments for annual periods beginning on or after 1 April, 2017."

(viii) In Appendix B, after paragraph B44, the following paragraphs and heading shall be inserted, namely:-

"Accounting for a modification of a share-based payment transaction that changes its classification from cash-settled to equity-settled

B44A If the terms and conditions of a cash-settled share-based payment transaction are modified with the result that it becomes an equity-settled share-based payment transaction, the transaction is accounted for as such from the date of the modification. Specifically:

(a) The equity-settled share-based payment transaction is measured by reference to the fair value of the equity instruments granted at the modification date. The equity-settled share-based payment transaction is recognised in equity on the modification date to the extent to which goods or services have been received.

(b) The liability for the cash-settled share-based payment transaction as at the modification date is derecognised on that date.

(c) Any difference between the carrying amount of the liability derecognised and the amount of equity recognised on the modification date is recognised immediately in profit or loss. B44B If, as a result of the modification, the vesting period is extended or shortened, the application of the requirements in paragraph B44A reflect the modified vesting period. The requirements in paragraph B44A apply even if the modification occurs after the vesting period.

B44C A cash-settled share-based payment transaction may be cancelled or settled (other than a transaction cancelled by forfeiture when the vesting conditions are not satisfied). If equity instruments are granted and, on that grant date, the entity identifies them as a replacement for the cancelled cash-settled sharebased payment, the entity shall apply paragraphs B44A and B44B. ”

(ix) In Appendix 1, after paragraph 4, the following paragraph shall be inserted, namely:-

“5. Paragraphs 53-59 and 60-63C in IFRS 2 have not been included in Ind AS 102 as these paragraphs relate to Transitional Provisions and Effective date, respectively. However, in order to maintain consistency with paragraph numbers of IFRS 2, the paragraph numbers are retained in Ind AS 102. ”

3. In the principal rules, in the “Annexure”, under the heading “B. Indian Accounting Standards (Ind AS)” in “Indian Accounting Standard (Ind AS) 7, Statement of Cash Flows”, -

(i) after paragraph 44, the following paragraphs and heading shall be inserted, namely:-

“Changes in liabilities arising from financing activities

44A An entity shall provide disclosures that enable users of financial statements to evaluate changes in liabilities arising from financing activities, including both changes arising from cash flows and non-cash changes.

44B To the extent necessary to satisfy the requirement in paragraph 44A, an entity shall disclose the following changes in liabilities arising from financing activities:

(a) changes from financing cash flows;

(b) changes arising from obtaining or losing control of subsidiaries or other businesses;

(c) the effect of changes in foreign exchange rates;

(d) changes in fair values; and

(e) other changes.

44C Liabilities arising from financing activities are liabilities for which cash flows were, or future cash flows will be, classified in the statement of cash flows as cash flows from financing activities. In addition, the disclosure requirement in paragraph 44A also applies to changes in financial assets (for example, assets that hedge liabilities arising from financing activities) if cash flows from those financial assets were, or future cash flows will be, included in cash flows from financing activities.

44D One way to fulfil the disclosure requirement in paragraph 44A is by providing a reconciliation between the opening and closing balances in the balance sheet for liabilities arising from financing activities, including the changes identified in paragraph 44B. Where an entity discloses such a reconciliation, it shall provide sufficient information to enable users of the financial statements to link items included in the reconciliation to the balance sheet and the statement of cash flows.

44E If an entity provides the disclosure required by paragraph 44A in combination with disclosures of changes in other assets and liabilities, it shall disclose the changes in liabilities arising from financing activities separately from changes in those other assets and liabilities. ”

(ii) after paragraph 52, the following paragraphs and heading shall be inserted, namely:-

"Effective date

53-59 [Refer Appendix 1]

60 Paragraphs 44A–44E have been added. When the entity first applies these amendments, it is not required to provide comparative information for preceding periods. An entity shall apply those amendments for annual periods beginning on or after 1 April, 2017."

(iii) In Appendix 1, after paragraph 5, the following paragraph shall be inserted, namely:-

"6. Paragraphs 53-59 in IAS 7 have not been included in Ind AS 7 as these paragraphs relate to Effective date. However, in order to maintain consistency with paragraph numbers of IAS 7, the paragraph numbers are retained in Ind AS 7."

B. S.O (E) Designation of Special Court for the state of Telangana and Andhra Pradesh

Dated 23.03.2017

In exercise of the powers conferred by sub-section (1) of section 435 of the Companies Act, 2013 (18 of 2013), the Central Government, with the concurrence of the Chief Justice of the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh hereby designates the following Courts mentioned in the Table below as Special Courts for the purposes of providing speedy trial of offences punishable with imprisonment of two years or more under the said Act, namely:-

TABLE

S. No. (1)	Existing Court (2)	Jurisdiction as Special Court (3)
1	Special Court for trial of Economic Offences-cum-VIII Additional Metropolitan Sessions Judge Court-cumXXII Additional Chief Judge, City Civil Court, Hyderabad	State of Telangana
2	Court of IV Additional District Judgecum-II Additional Metropolitan Sessions Judge, Visakhapatnam.	State of Andhra Pradesh

2. The aforesaid Courts mentioned in column number (2) shall exercise the jurisdiction as Special Courts in respect of jurisdiction mentioned in column number (3).

C. S.O (E) Substitution of ICSI and ICAI nominee on NACAS

Dated 23.03.2017

In exercise of the powers conferred by sub-section (1) of section 210A of the Companies Act, 1956 (1 of 1956), hereinafter referred to as the said Act, the Central Government hereby makes the following further amendments in the notification of the Government of India, in the Ministry of Corporate Affairs vide number S.O. 3118 (E), dated the 3rd October, 2016, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) dated the 3rd October, 2016, namely:-

2. In the said notification, in paragraph 1, for serial numbers 3 and 4 and the entries relating thereto, the following serial numbers and the entries shall be substituted, namely:-

(3)	Dr. Shyam Agrawal, President, the Institute of Company Secretaries of India	Member, [nominated under clause (b) of sub-section (2) of section 210A of the said Act]
(4)	Shri Nilesh S. Vikamsey, President, the Institute of Chartered Accountants of India	Member, [nominated under clause (b) of sub-section (2) of section 210A of the said Act]

D. G.S.R. 307(E) Companies (Audit and Auditors) Amendment Rules, 2017

Dated 30.03.2017

In exercise of powers conferred by section 143 read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Audit and Auditors) Rules, 2014, namely:—

1. (1) These rules may be called the Companies (Audit and Auditors) Amendment Rules, 2017.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Audit and Auditors) Rules, 2014, in rule 11, after clause (c), the following clause shall be inserted, namely:—

"(d) whether the company had provided requisite disclosures in its financial statements as to holdings as well as dealings in Specified Bank Notes during the period from 8th November, 2016 to 30th December, 2016 and if so, whether these are in accordance with the books of accounts maintained by the company."

E. G.S.R. 308(E) Amendment in Schedule III to the Companies Act, 2013.

Dated 30.03.2017

In exercise of the powers conferred by sub-section (1) of section 467 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following further amendments to Schedule III of the said Act with effect from the date of publication of this notification in the Official Gazette, namely:-

2. In the Companies Act, 2013 (hereinafter referred to as the principal Act), in Schedule III, in Division I, in Part I under the heading "General instructions for preparation of Balance Sheet" in paragraph 6, after clause 'W', the following clause shall be inserted namely:-

"X. Every company shall disclose the details of Specified Bank Notes (SBN) held and transacted during the period from 8th November, 2016 to 30th December, 2016 as provided in the Table below:-

	SBNs	Other denomination notes	Total
Closing cash in hand as on 08.11.2016			
(+) Permitted receipts			
(-) Permitted payments			
(-) Amount deposited in			

Banks			
Closing cash in hand as on 30.12.2016			

Explanation : For the purposes of this clause, the term 'Specified Bank Notes' shall have the same meaning provided in the notification of the Government of India, in the Ministry of Finance, Department of Economic Affairs number S.O. 3407(E), dated the 8th November, 2016.".

3. In the principal Act, in Schedule III, in Division II, in Part I under the heading "General instructions for preparation of Balance Sheet" in paragraph 6, after clause 'J', the following clause shall be inserted namely:-

"K. Every company shall disclose the details of Specified Bank Notes (SBN) held and transacted during the period 08/11/2016 to 30/12/2016 as provided in the Table below:-

	SBNs	Other denomination notes	Total
Closing cash in hand as on 08.11.2016			
(+) Permitted receipts			
(-) Permitted payments			
(-) Amount deposited in Banks			
Closing cash in hand as on 30.12.2016			

Explanation : For the purposes of this clause, the term 'Specified Bank Notes' shall have the same meaning provided in the notification of the Government of India, in the Ministry of Finance, Department of Economic Affairs number S.O. 3407(E), dated the 8th November, 2016.".

F. G.S.R. 309 (E) Companies (Meetings of Board and its Powers) Amendment Rules, 2017.

Dated 30.03.2017

In exercise of the powers conferred under sections 173, 175, 177, 178, 179, 184, 185, 186, 187, 188, 189 and section 191 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Meetings of Board and its Powers) Rules, 2014, namely:—

1. (1) These rules may be called the Companies (Meetings of Board and its Powers) Amendment Rules, 2017.
(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Meetings of Board and its Powers) Rules, 2014, in rule 15, in sub-rule (3), in clause (a)—

(a) in item (i), item (ii), item (iii) and item (iv), for the words "exceeding ten per cent." Wherever they occur, the words "amounting to ten per cent. or more" shall be substituted; and

(b) in item (iii), for the words "ten per cent. of turnover" the words "ten per cent. or more of turnover" shall be substituted.

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