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INTELLECTUAL
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I-CUBE NEWSLETTER

Thursday, 1st January 2026

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HAPPY NEW YEAR 2026

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CORPORATE ENVIRONMENT RESPONSIBILITY

- Dr.C.V.Madhusudhanan
Partner

Ecological balance is the stable, self-regulating state of an ecosystem where living organisms (plants, animals, microbes) and their non-living environment (water, soil, air) coexist in a dynamic equilibrium, meaning, they constantly adjust to maintain overall health, biodiversity and sustainability despite natural changes.

Corporate growth must be balanced with ecological health, a principle central to modern sustainability and the "triple bottom line" approach of People, Planet, and Profit. This integration is no longer merely an ethical choice but a strategic business imperative for long-term business sustainability, risk management, and competitive advantage.

Corporate Social Responsibility (CSR) absolutely includes the conservation of ecological balance, encompassing environmental sustainability, protecting flora and fauna, conserving natural resources, and maintaining soil, air, and water quality, often as a legal duty, not just charity, as reinforced by recent Indian Supreme Court decision on a writ petition filed seeking conservation of '*Godawan'* a.k.a Great Indian Bustard (GIB).

A writ petition filed in the Supreme Court (SC) under Article 32 to seek protection for the GIB, a species found primarily in Gujarat and Rajasthan. The GIB is endemic to the Indian subcontinent now surviving only in dry grasslands of Rajasthan and Gujarat. It is classified as India's most critically endangered bird. By an interim order in 2021, the SC restricted the installation of overhead transmission lines on the migration path and established a committee to consider the feasibility of high-voltage underground power lines. The fact of the matter is that heavy power transmission lines relating to non-renewable energy generators cris-cross the habitat where GIB thrive and as these birds are large and heavy with lateral vision, it is difficult for them to sight the power lines in their flight path and they sadly end up entangled and electrocuted. Only few hundred of these great birds survive today.

As the Ministries concerned opposed the restriction imposed by SC, the Court appointed an expert committee to suggest recommendations that strike a balance between conservation and development. This committee submitted reports to identify priority and non-priority areas in the states of Rajasthan and Gujarat to implement the necessary conservation measures.

The Court held that entities engaged in power generation and transmission in both priority and non-priority areas in Rajasthan and Gujarat must remember that they

share the environment with the GIB. It reiterated the “species best interest” standard, placing the survival of the species as the top priority. Further, the Court held that the “polluter pays” principle mandates that those responsible should bear the cost of the species’ recovery. Accepting the committee’s report, the Court issued directions to Gujarat and Rajasthan for their implementation.

The key take-aways of the SC decision are:

- CSR to include Corporate Environment Responsibility.
- Fiduciary duties of Directors’ has been enlarged under Section 166(2) of the Companies Act, 2013 to take care of interests inter alia of community and protection of environment.
- The definition of “community” within the CSR framework has been expanded to explicitly include the natural world, cementing the link between social welfare and environmental health.
- Protecting ecology is a “social responsibility”, as human beings, we cannot “own” or “use” environment for “our purpose”.
- The corporate duty must evolve from merely protecting the shareholders to protecting the ecosystem that we all inhabit.

The Court observed that “corporate definition of 'social responsibility' must inherently include environmental responsibility. Companies cannot assert to be socially responsible while ignoring equal claims of the environment and other beings of the ecosystem,"

Hence companies need to integrate this through sustainable practices, reducing emissions, waste, and investing in green initiatives, making it a core aspect of responsible business, not optional philanthropy.

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ALIGNMENT FOR WATER STEWARDSHIP

- Dr.K.S.Ravichandran
Managing Partner

You would have heard about the depleting fresh water sources. You would have certainly heard about the difficulty our future generations may encounter to get fresh water.

Water is essential in developing and maintaining successful and healthy economies and for human health and wellbeing. However, we must use water responsibly and sustainably to protect the needs of the natural environment and ensure the ongoing availability of water as an essential resource and human right.

Any responsible business or organization should commit to causing no harm to the natural environment and communities and aspire to achieving a net benefit. In principle, water is an endlessly renewable resource, provided it is managed responsibly and sustainably.

The growing pressures on freshwater, affecting both its quantity and quality, are well documented and arise from a range of factors, including population growth, economic growth, increasing demand for food, rising living standards, and climate change. These pressures have already resulted in significant impacts on the natural environment and vulnerable communities.

Greater progress on achieving and implementing good water stewardship principles is required to ensure water use for human and economic needs does not continue to disrupt sustainable water cycles or cause ongoing harm to nature and biodiversity.

The Alliance for Water Stewardship (AWS) is a global membership collaboration of businesses, NGOs and the public sector. The objective of the AWS Standard is to drive water stewardship, which we define as: the use of water that is socially and culturally equitable, environmentally sustainable and economically beneficial, achieved through a stakeholder-inclusive process that involves site-and catchment-based actions.

If an organisation is engaged in activities where “water” is a material topic, it should apply mind on AWS. The organisation may determine the material topics by referring to GRI Sustainability Reporting Standards (GRI Standards) introduced by the Global Reporting Initiative (GRI).

GRI 3: Material Topics 2021, issued by the Global Sustainability Standards Board (GSSB), provides step-by-step guidance for organizations on how to determine material topics. Material topics are topics that represent an organization’s most significant impacts on the economy, environment, and people, including impacts on their human rights. It also explains how the Sector Standards are used in this process.

Considered in the context of the relevant sector standard that is applicable to an organisation, the organisation must understand the organisation’s context and identify the material topics and their actual and potential impacts on the economy, environment, and people, including impacts on their human rights and assess the significance of the impacts and prioritize the most significant impacts for reporting.

Water will be one of the material topics if the organisation finds that its dependence on water has a significant impact on the economy, environment, and people, including impacts on their human rights. In such a case, the organisation may consider adopting AWS standard. The organisation will be able to position water as an important theme in their governance structure itself.

AWS requires the organisation to follow the following steps:

STEP 1: GATHER AND UNDERSTAND
STEP 2: COMMIT AND PLAN
STEP 3: IMPLEMENT
STEP 4: EVALUATE
STEP 5: COMMUNICATE & DISCLOSE

The most important part of adoption of AWS standard lies in creating a water stewardship strategy and water stewardship plan. These strategies and plan will vary depending upon the sites where the organisation operates. Under the AWS Standard, the site is the physical area over which the implementing organization owns or manages land and carries out its principal activities. In most cases it is a contiguous area of land but may also include physically separated but nearby areas (especially if

in the same catchment). For a factory, the 'site' is typically represented by the fenced area encompassing all its buildings, parking and storage areas.

In fact, any topic that receives the attention of the board of directors or the topmost governing body of an organisation will certainly receive necessary attention at all levels and organisation's policies, goals and programmes will be aligned in a synchronised manner to achieve a sustainable growth.

NOTE: *"The water we see and use today has been circulating on the planet for many millions of years. However, freshwater is lost from the water cycle if it becomes polluted, or if it is abstracted more quickly than it is replenished."*

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REVOCATION OF PATENT

- Er. L.Santhanam
Associate – Internal Audits & Innovation Analysis

A Patent is an important intellectual property which grants exclusive right to the original inventor for a novel product or process and determines the technological and industrial growth of the country. Patents in India is governed by the 'Patents Act 1970' and its amendments., Section 3(a-p) of the Act determines what is not patentable in India.

Patents can be invalidated while an applicant pursues before the patent authorities or even after the grant of the patent by a pre-grant opposition under Section 25 (1) or through post-grant opposition under Section 25 (2) of the Patents Act, 1970. In addition, a defendant in an infringement suit taken out by the patent grantee could challenge the validity of the grant itself seeking revocation of patents under section 64 of the Patents Act 1970.

In **Monsanto Technology LLC v Nuziveedu Seeds Ltd.,** a landmark case concerning patent law for genetically modified cotton seeds, the events began when the plaintiff (Monsanto) terminated a sub-licence agreement granted to the defendant (Nuziveedu). Monsanto alleged that Nuziveedu is infringing the patent rights granted to it and filed a patent infringement suit against Nuziveedu. However, Nuziveedu challenged the validity of the patent granted to Monsanto by taking out proceedings for patent revocation under Section 64 read with Section 3(j) of the Patents Act, 1970.

The Backdrop

In 2004, Monsanto Technology LLC ("Monsanto"), a leading agricultural biotechnology company, entered into a sub-licensing agreement with Nuziveedu Seeds Limited ("Nuziveedu") and its subsidiaries and provided access to its patented Bt (Bacillus thuringiensis) cotton technology into cotton seeds, which conferred pest resistance to cotton crops in India. For the agreement, Nuziveedu paid royalties to Monsanto for using its patented technology.

In the meantime, state government introduced price control measures to ensure that genetically modified (GM) seeds remained affordable for farmers, and the Minimum Support Price (MSP) for cotton seeds was fixed, and the trait value (royalty) payable for the use of GM technology was significantly reduced. Nuziveedu adhered to the government-imposed pricing and refused to pay Monsanto the higher royalty as

stipulated in their contract. Monsanto, asserting that the contract terms were binding irrespective of local regulatory changes, terminated the agreement in 2015.

Due to this dispute, Monsanto subsequently filed a suit seeking an injunction to restrain Nuziveedu from using its trademarks, such as “BOLGARD” and “BOLGARD II” and marketing and selling GM hybrid cotton seeds incorporating Monsanto’s patented technology.

Nuziveedu challenged Monsanto’s claims on two grounds:

a) **Patent Invalidity**: They argued that Monsanto’s patent on the GM cotton seeds was invalid under Section 3(j) of the Indian Patents Act, 1970, which excludes certain biological materials and processes from patentability.

b) **Contractual Non-Compliance**: They justified paying the government-mandated trait fee rather than the contractually agreed royalty.

This case brought up several legal and factual issues, including:

a) Whether gene sequences used in Monsanto’s Bt cotton seeds were excluded from patentability under Section 3(j) of the Patents Act, 1970.

b) Whether Monsanto’s termination of the agreement and Nuziveedu’s refusal to pay royalties violated the terms of the sub-licensing contract.

c) Whether Monsanto was entitled to an ad interim injunction against Nuziveedu for using its trademarks and patented technology.

d) To what extent did government-imposed pricing affected the enforceability of contractual obligations.

Legal dispute & Lower Court Rulings:

Single Bench (Delhi High Court) found Monsanto's patent prima facie valid but reinstated the license, directing Nuziveedu to pay government-fixed rates.

On further appealing the Division Bench (Delhi High Court), invalidated the patent, ruling it non-patentable under Section 3(j) and better suited for plant variety protection.

Finally, the Supreme Court [2021] **3 SCC 381,** in its order, set aside the Division Bench's decision, finding it was a summary judgment on complex technical issues (chemical, biochemical processes) without proper expert evidence.

The key outcome was that the Supreme Court restored the Single Judge's order, directing the High Court to conduct a full trial on the patent's validity and infringement, emphasizing that complex IP matters have to be adjudicated with thorough evidence.

Supreme Court held:

Section 64 of the Act provides for revocation of patent based on a counter claim in a suit. It necessarily presupposes a valid consideration of the claims in the suit and the counter claim in accordance with law and not summary adjudication sans evidence by abstract consideration based on text books only.

Summary adjudication of a technically complex suit requiring expert evidence at the stage of injunction in the manner done, was certainly neither desirable nor permissible in law. The suit involved complicated mixed questions of law and facts with regard to patentability and exclusion of patent which could be examined in the suit on the basis of evidence.

In essence, the Supreme Court sent the case back for a proper trial, preventing premature invalidation of the patent and emphasizing the need for evidence-based decisions in complex biotechnology patent disputes.

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INDEPENDENT DIRECTORS – REAPPOINTMENT

- CS Raghunath Ravi
Partner

Section 149 of the Companies Act 2013 (the Act) contains provisions relating to Independent Directors.

Appointment of an Independent Director for the first term (which cannot exceed 5 years) is made by the Board of Directors of a company (listed / unlisted public companies) as additional director based on the recommendation of the Nomination and Remuneration Committee of the company, subject to the approval of the members of the company to be obtained at the next annual general meeting to be held (in case of unlisted companies). In the case of listed companies, the approval of the members of the company must be obtained within 3 months of the date of appointment by the Board.

What shareholders actually do at a general meeting (or through postal ballot) is nothing but approving the appointment made by the Board of Directors. Date of appointment or other terms of appointment of the independent director concerned, would remain the same.

When it comes to reappointment of the Independent Director for a second term, the statutory requirements are different. Board cannot appoint the person as an additional director and go to shareholders.

For ease of reading, it would be useful to note what Section 149(10) of the Act says:

> **Subject to the provisions of section 152, an Independent Director** shall hold office for a term up to five consecutive years on the Board of a company, but **shall be eligible for reappointment on passing of a special resolution by the company** and disclosure of such appointment in the Board's report.

The words "shall be eligible for reappointment" means a lot.

It may be useful to refer to the following passage from the Guidance Note on Independent Directors issued by the Institute of Company Secretaries of India.

> *In the Webster dictionary, the term "eligible" is referred to in the context a person or thing that is qualified or permitted to do or be something.*
>
> *The term "re-appointment" is also defined in the webster dictionary as "to name officially to a position for a second or subsequent time".*

If the shareholders' approval by special resolution for his re-appointment for second term is not taken as on the last date of the first term, then such Independent Director cannot be re-appointed by Board as an additional director for second term, as he does not possess the eligibility to get reappointed for second term and hence, he ceases to be a director at the end of his first term.

Thus, reappointment of the Independent Director, unlike the first term, though would be recommended by the Nomination and Remuneration Committee and also approved by the Board of Directors, would not be possible unless such reappointment is approved by shareholders by a special resolution duly passed at a general meeting or through postal ballot before the expiry of the first term. Therefore, companies may ensure that the reappointment happens in the aforesaid manner.

In short, the person who must be reappointed cannot be appointed as if there is another first term by creating a gap between the date of expiry of first term and date of appointment again. A person who has served two terms as Independent Director cannot be appointed again until the expiry of 3 years of ceasing to be an Independent Director. Once a gap is created, the question reappointing the same person for a second term is lost. The Independent Director too may not want that regulators get an opportunity to challenge the validity of reappointment.

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SUO MOTU POWERS OF NATIONAL COMPANY LAW TRIBUNAL (NCLT) TO ORDER INVESTIGATIVE AUDIT

- Advocate S.Manjuladevi
Associate (Senior Inhouse Counsel)

By an elaborate Judgment dated 23rd December, 2025, the Chennai Bench of the National Company Law Appellate Tribunal (NCLAT) held that NCLT has suo motu powers to order Investigative or Forensic Audit by Chartered Accountants.

In the context of the above decision, it would be useful to read Rule 43(3) of the NCLT Rules, 2016, which reads as under:

> **43(3)** - Where any party preferring or contesting a petition of oppression and mismanagement raises the issue of forgery or fabrication of any statutory records, then it shall be at liberty to move an appropriate application for forensic examination and the Bench hearing the matter may, for reasons to be recorded, either allow the application and send the disputed records for opinion of Central Forensic Science Laboratory at the cost of the party alleging fabrication of records, or dismiss such application.

A plain reading of the above rule suggests that, only an application by any party, NCLT has powers to send the disputed records for forensic examination. However, a close reading of the rule will make it clear that it grants “liberty” to any of the parties to move an application. When the rule states that a party shall be at liberty, it should not be narrowly understood to mean that NCLT can pass orders only when one or more of the parties make an application under this rule.

Recently, in the case of *M/s. Able Automobiles Pvt. Ltd. and 4 others v Rekha Singhal and 2 others,* a question arose before NCLAT with respect to the validity of an order passed by NCLT, Kochi Bench directing an audit by an Independent Chartered Accountant with respect to a specified aspect. One of the grounds of challenge was whether the NCLT, without any application before it praying for such an audit, was the NCLT, within its powers to make such an order.

Ruling that NCLT has powers, the Appellate Tribunal held that NCLT can exercise suo motu powers to order a forensic audit as it deems necessary. It further held that an application under Rule 43 is only procedural and it cannot restrict the power of the tribunal to call for documents or verify their authenticity.

The NCLAT held that “*the word "**liberty**", which has been left open to be exercised by the parties, is not to be read in a restrictive manner, as a restraint for the Ld. Tribunal*

to exercise its inherent powers to call for a document for its scientific examination, which it feels to be just for an effective adjudication, so as to rule over the plea of fraud".

The NCLAT held that "*nothing under the rules specifically prohibits that the Ld. Tribunal cannot exercise its suo moto power, even when the Ld. Tribunal feels that, it was necessary for to facilitate them to come to a plausible and an effective conclusion about the controversy pertaining to a document, which may be having a vital bearing on the merit adjudication of the controversy before it*".

In short, the NCLAT held that the order of NCLT directing a Forensic Investigative Audit to be conducted, cannot be held to be bad merely because there was no application praying for such an order.

It is after all, an era, where under the Insolvency and Bankruptcy Code, 2016, an Insolvency Professional acting as the Resolution Professional of a Corporate Debtor undergoing Corporate Insolvency Resolution Process is entitled to appoint Independent Chartered Accountants to carry out Forensic Audits to study avoidance transactions, if any.

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SMALL COMPANY DEFINITION WIDENED

- CS V.R.Sankaranarayanan
Partner

A *Small Company* enjoys certain privileges and exemptions under the Companies Act, 2013 effective from 1st April 2014.

As per section 2(85) of the Companies Act, 2013, a small company means a company

a. that is not a public company,
b. whose paid-up capital does not exceed Rs.4 crores and turnover not exceeding Rs.40 crores, and
c. which is not a
   - a holding company or subsidiary company,
   - section 8 company or
   - a company or body corporate governed by any specific Act.

The threshold limit of paid-up capital or turnover have to be ascertained as per the latest audited balance sheet.

ENHANCED THRESHOLD LIMIT AND ADVANTAGES:

Effective from 01/12/2025, vide notification [G.S.R. 880(E), 1st December, 2025], threshold limit of paid-up capital was increased to Rs.10 crores from Rs.4 crores and turnover limit from Rs.40 crores to Rs.100 crores.

This enhancement significantly expands the number of companies qualifying as Small Companies, enabling them to avail various statutory relaxations and compliance benefits.

EXEMPTION FROM COMPULSORY DEMATERIALISATION OF SHARES – BURDEN AND COST REDUCED:

One of the most discussed compliance requirements in recent times is the requirement for mandatory dematerialisation of shares by private companies. However, small companies are exempt from mandatory dematerialisation of shares resulting in huge cost savings. Those companies who have already dematerialised their shares can also consider the option of rematerializing their shares, based on future requirements.

SPECIFIC PRIVILEGES OR EXEMPTIONS TO SMALL COMPANIES:

1. **Cash Flow Statement**: Not required to form part of financial statements [Section 2(40) of the Act]

2. **Annual Returns**: Annual returns of small companies do not require certification by a Practising Company Secretary. The return may be signed by the Company Secretary or, in the absence thereof, by a director, and to be filed in a simplified e-form as prescribed. [Section 92 of the Act]

3. **Abridged Board's Report:** Small companies are entitled to prepare an abridged Board's Report in accordance with Rule 8A of the Companies (Accounts) Rules, 2014, without prejudice to the need for making certain mandatory disclosures. [Section 134 of the Act]

4. **Internal Financial Controls:** Not required to report on Internal Financial Controls in the Board's Report [Section 134 of the Act].

5. **Board Meetings**: Required to hold only one Board Meeting in each half of a calendar year, with a minimum gap of 90 days between the meetings. [Section 171 of the Act]

6. **Auditor Rotation:** Not applicable pursuant to Section 139(2). However, for private companies other than small companies, this exemption is unavailable if borrowings from banks or financial institutions exceed the limits prescribed under Rule 5 of the Companies (Audit and Auditors) Rules, 2014.

7. **Simplified Merger Process:** Small companies can undertake mergers, amalgamations, demergers through a simplified procedure without going to NCLT [Section 233 of the Act]

8. **Mandatory Dematerialisation of Shares:** Small companies are exempt from compulsory dematerialisation of securities. [Rule 9B of the Companies (Prospectus and Allotment) Rules, 2014]

9. **Lesser Penalties for Non-compliances:** Section 446B provides that penalties for non-compliances shall not exceed 50% of the prescribed penalty, subject to a maximum of Rs.2 lakh for the company and Rs.1 lakh for officers in default or other persons. [Section 446B of the Act]

A Caveat:

However, when a company touches a paid-up share capital of Rs.10 Crores, Rule 8A of the Companies (Appointment and Remuneratiosn of Managerial Personnel) Rules, 2014 stipulates mandatory appointment of a Whole-time Company Secretary. Therefore, it may be advisable to retain the status of a small company by maintaining a paid-up share capital of Rs.9.99 Crores or less, until Rule 8A is amended to carve out an exception to small companies.

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