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**STANDING COMMITTEE ON FINANCE
(2017-18)**

SIXTEENTH LOK SABHA

MINISTRY OF CORPORATE AFFAIRS

[Action taken by the Government on the recommendations contained in Fifty-Ninth Report of the Standing Committee on Finance on 'Demands for Grants (2018-19)']

SIXTY-FIFTH REPORT



**LOK SABHA SECRETARIAT
NEW DELHI**

August, 2018 / Shravana, 1940 (Saka)

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(2017-2018)**

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MINISTRY OF CORPORATE AFFAIRS

[Action taken by the Government on the recommendations contained in Fifty-Ninth Report of the Standing Committee on Finance on 'Demands for Grants (2018-19)']

Presented to Lok Sabha on 9 August, 2018

Laid in Rajya Sabha on 9 August, 2018



**LOK SABHA SECRETARIAT
NEW DELHI**

August, 2018 / Shravana, 1940 (Saka)

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Finance on 'Demands for Grants (2018-19)

COMPOSITION OF STANDING COMMITTEE ON FINANCE – 2017-18

Dr. M. Veerappa Moily - Chairperson

MEMBERS

LOK SABHA

2. Kunwar Pushpendra Singh Chandel
3. Shri Bandaru Dattatreya
4. Shri Nishikant Dubey
5. Shri Venkatesh Babu T. G.
6. Shri P.C. Gaddigoudar
7. Shri C. Gopalakrishnan
8. Shri Shyama Charan Gupta
9. Shri Rattan Lal Kataria
10. Shri Chandrakant Khaire
11. Shri Bhartruhari Mahtab
12. Shri Prem Das Rai
13. Shri Rayapati Sambasiva Rao
14. Prof. Saugata Roy
15. Shri Rajiv Pratap Rudy
16. Shri Jyotiraditya M. Scindia
17. Shri Gopal Shetty
18. Dr. Kiritbhai P. Solanki
19. Dr. Kirit Somaiya
20. Shri Dinesh Trivedi
21. Shri Shivkumar Udasi

RAJYA SABHA

22. Shri Rajeev Chandrasekhar
23. Shri Anil Desai
24. Dr. Narendra Jadhav
25. Shri A. Navaneethakrishnan
26. Shri Mahesh Poddar
27. Dr. Mahendra Prasad
28. Shri C.M. Ramesh
29. Shri T.K. Rangarajan
30. Shri Digvijaya Singh
31. Dr. Manmohan Singh

SECRETARIAT

- | | | | |
|----|----------------------------|---|---------------------|
| 1. | Smt. Abha Singh Yaduvanshi | - | Joint Secretary |
| 2. | Shri Rajesh Ranjan Kumar | - | Director |
| 3. | Shri Kulmohan Singh Arora | - | Deputy Secretary |
| 4. | Ms. Melody Vungthiansiam | - | Committee Assistant |

INTRODUCTION

I, the Chairperson of the Standing Committee on Finance, having been authorized by the Committee, present this Sixty-fifth Report on action taken by Government on the Observations / Recommendations contained in the Fifty-ninth Report of the Committee (Sixteenth Lok Sabha) on Demands for Grants (2018-19) of the Ministry of Corporate Affairs.

2. The Fifty-ninth Report was presented to Lok Sabha / laid on the table of Rajya Sabha on 09 March, 2018. The Action Taken Notes on the Recommendations were received from the Government *vide* their communication dated 5 June, 2018.

3. The Committee considered and adopted this Report at their sitting held on 6 August, 2018.

4. An analysis of the action taken by the Government on the recommendations contained in the Fifty-ninth Report of the Committee is given in the Appendix.

5. For facility of reference, the observations / recommendations of the Committee have been printed in bold in the body of the Report.

NEW DELHI
06 August, 2018
15 Shravana, 1940 (Saka)

DR. M. VEERAPPA MOILY,
Chairperson,
Standing Committee on Finance

REPORT

CHAPTER – I

This Report of the Standing Committee on Finance deals with action taken by the Government on the recommendations/observations contained in their 59th Report (Sixteenth Lok Sabha) on Demands for Grants (2018-19) of the Ministry of Corporate Affairs which was presented to Lok Sabha / laid in Rajya Sabha on 9 March, 2018.

2. The Action Taken Notes have been received from the Government in respect of all the 10 recommendations contained in the Report. These have been analyzed and categorized as follows:

- (i) Recommendations/Observations that have been accepted by the Government:

Recommendation Nos. 1,2,3,4,5,6,7,8,9 & 10

(Total 10)
(Chapter- II)

- (ii) Recommendations/Observations which the Committee do not desire to pursue in view of the Government's replies:

NIL

(Total NIL)
(Chapter- III)

- (iii) Recommendations/Observations in respect of which replies of Government have not been accepted by the Committee:

NIL

(Total NIL)
(Chapter -IV)

- (iv) Recommendations/Observations in respect of which final replies by the Government are still awaited:

NIL

(Total - NIL)
(Chapter- V)

3. The Committee desire that the replies to the observations/recommendations contained in Chapter-I may be furnished to them expeditiously.

4. The Committee will now deal with and comment upon the action taken by the Government on some of their recommendations.

Recommendation (Serial No. 3)

5. The Committee note that Serious Fraud Investigation Office (SFIO) is a statutory multi-disciplinary Investigating Agency working to unravel corporate frauds. Cases are assigned by Central Government as per provisions of Section 212 of Companies Act, 2013, where Government is of the opinion that it is necessary to investigate into the affairs of a company by SFIO. The Committee note that over last four years i.e. from 2014-15 to 31st January 2018, 166 cases of investigation were assigned for investigation to SFIO, while only 65 cases have been resolved and completed so far; the average time taken for successful prosecution/conviction is stated to be 61.94 months (as on 01.02.2018). Taking into account the available facts on the overall functioning of SFIO, particularly the average time taken for completion of investigation, submitting investigation report, average time taken for prosecution, success rate of prosecution etc., the Committee cannot but express their displeasure over lax functioning of this statutory investigative agency under the Ministry. The Committee would therefore, reiterate their recommendation that the Ministry of Corporate Affairs should conduct a comprehensive review of the functioning of SFIO with a view to upgrading/improving its present level of performance to fulfill its statutory mandate.

The Committee find that of the 133 sanctioned posts in different categories in SFIO, there are as many as 69 vacant posts i.e. more than 50%. Moreover out of these, 75 posts are sanctioned posts for deputationists (50 of these are still vacant). In view of the large number of vacancies, the Committee has been time and again emphasizing to fill up the existing vacancies with permanent cadre, as they would be more bound with the organisation in performing their functions. The Committee, therefore, re-emphasise that the SFIO should fill its vacancies with adequate permanent cadre and strengthen both its investigative and prosecution arms by developing fool-proof fraud detection mechanisms. In order to bring continuity in the functioning of SFIO, they desire that the post of Director, SFIO should have a fixed tenure as is the case with the posts in CBI and ED.

The Committee also note the establishment of full scale 'early warning system', with the estimated cost of Rs 123.68 crore was approved in June 2017. However, as the lowest financial bid was around 100 percent more than the initial estimated project cost, the project at present is stated to be under reconsideration. The Ministry had earlier set up fraud detection modules such as Early Warning System and Forensic Lab, but without any visible benefits accruing therefrom in terms of investigation outcomes. The Committee would therefore recommend that precious funds should not be blocked in such experiments which have no investigative value for the organisation. Early Warning Systems should be deployed only if the Ministry/SFIO are fully satisfied about their proven utility for detection of fraud and investigation of cases and the Ministry is well-equipped to use such systems *real-time* for investigation of cases and their successful prosecution. In this regard, the Ministry should also pay attention to the quality of manpower deployed for investigation and closely monitor their work for fruitful outcomes. The Committee desire

that SFIO should be adequately strengthened for particularly detecting and investigating all commercial/corporate frauds in a professional manner. The Committee would also like to be apprised about the complaints-redressal mechanism in the SFIO and the action taken by them in respect of complaints received in the last three years.

6. In their action taken reply the Ministry of Corporate Affairs have submitted as follows:-

"There are various factors which are affecting the speed of investigation and effectiveness of prosecution/conviction in SFIO. Acute shortage of manpower coupled with increased assignment of investigations have largely slowed the speed of investigations. Further, wherever multiple agencies are involved in investigation of frauds assigned to SFIO, obtaining of records/information seized by these agencies is a time-consuming process. With a view to address these factors, the Ministry has been making concerted efforts in coordination with DOP&T & UPSC as well as ensuring an effective coordination mechanism with other Investigation Agencies.

Recruitment to 42 posts of SFIO, out of total 133 sanctioned posts, is through 'Direct Recruitment (DR)'. Further, in order to provide career opportunities to DR officials, and also to ensure progressive growth of 'permanent cadre' in the office, provision of 'appointment through promotion' has been made in the Recruitment Rules (RRs) of 36 higher grade posts. Thus, strength of permanent cadre officials will increase over the years. Meanwhile, as promotion of DR officials, who have been appointment recently, to 'higher grade posts' would require completion of mandatory 'residency period' in lower grades as per relevant Recruitment Rules, provision for 'deputation' has been retained for the interim period.

Out of 42 posts, total 27 posts are presently filled up. The Ministry has already submitted requisition to UPSC/SSC for filling up 15 more posts of DR. Besides this, UPSC has been requested to nominate 02 DR candidates from the Reserve Panel. Since the last report, 05 DR officials have resigned from their posts, either on appointment in some other organisations or on personal grounds.

As officers on deputation join their posts for a fixed tenure, they have to revert to their cadre after expiry of the tenure. Since beginning of this year, 02 officers have already repatriated from SFIO. Out of 75 posts under Deputation (ISTC), 23 posts are presently filled up, and offer of appointment stands issued to 03 more candidates. Further, 57 vacancies (including anticipated vacancies) have been advertised for invitation of application for various posts. Due to poor response, the last dates for receipt of applications have been extended multiple times. Meanwhile, the Ministry has mooted a proposal to Department of Expenditure (DoE) for allowing Special Incentive Allowance/Investigation Allowance @ 20% of Basic Pay to officials posted in SFIO, as in other premier Investigative agencies viz. CBI, ED, IB. This will incentivize postings in the office, and elicit positive response from candidates. Better remuneration would also help in better retention of DR officials in SFIO. Prior to implementation of 7th Central Pay Commission (7th CPC), SFIO officers were getting Investigation Allowance (maximum Rs. 2000/-). Furthermore, the Ministry has approached DoPT for exemption from UPSC consultation while making appointments to certain posts, and also to treat SFIO's vacancies as open vacancies.

Out of total 16 encadred posts in SFIO, 11 are presently filled up. The Ministry has approached Department of Legal Affairs for their No Objection Certificate (NOC) so as to fill up 03 Indian Law Service (ILS) vacant posts through other means. The Ministry is also pursuing with NIC for filling up 02 vacant posts.

The Ministry has approved engagement of experts in SFIO as Consultants of various fields, under Rule 3 and 4 (d) of the Companies (Inspection, Investigation & Inquiry) Rules, 2014. Presently, 38 consultants/experts are engaged in the office.

Appointment to the post of Director, SFIO is made on deputation basis, from amongst officers not below the rank of Joint Secretary to the Govt. of India, and having knowledge and experience in dealing with matters of corporate affairs. As Director, SFIO is deputation post, tenure of incumbents is governed by deputation rules of DoPT.

Early warning System (EWS): On account of mismatch in the financial bids received and the estimates, the project in its original form is being shelved.

The Computer Forensic and Data Mining Lab (CFDML) is actively assisting the investigation Units in acquiring digital data in forensically sound manner and process the same, which is used by the investigation units in their investigations.

Till date, 43 cases have been processed/ is under process in the CFDML. Databases have been analysed in respect of 15 cases and the analysis reports have been prepared and shared with the Investigation Units. In respect of 20 cases, data has been processed and shared with the Investigation Units.

Recently, the Ministry of Electronics and Information Technology (MeitY) has notified the CFDML, SFIO as Examiner of Electronic Evidence under Section 79A of IT Act, 2000.

SFIO has no mandate under the Companies Act for redressing complaints received. All the complaints received at SFIO are handled as per a Standard Operating Procedure. The complaints are first screened by Supervisory Officers for their gravity & serious repercussions with reference to amount involved, number of persons affected, public interest involved, modus operandi being of complex nature, which greatly dents public confidence. The complaints of serious nature are examined in depth and Research Reports prepared which are submitted to the Ministry for appropriate action. All the complaints received at SFIO, from various sources, are forwarded to respective Registrar of Companies (ROCs)/Regional Directors (RD) for appropriate action as per the directions of Ministry of Corporate Affairs. Earlier, all complaints received in SFIO were forwarded to Ministry of Corporate Affairs for appropriate action."

The total number of complaints received in SFIO in the last three financial years and forwarded to the respective ROCs is given below:-

Year	Number of complaints
1-4-2015 to 31-3-2016	1294
1-4-2016 to 31-3-2017	1196
1-4-2017 to 31-3-2018	923

7. The Committee note that out of the total 133 sanctioned posts in SFIO, the present status of posts filled are 27 out of 42 Direct Recruitment (DR) posts, 23 out of 75 Deputation posts and 11 out of 16 encadred posts. The Committee also note that the Ministry have mooted a proposal to Department of Expenditure (DoE) for allowing Special Incentive Allowance/Investigation Allowance @ 20% of Basic Pay to officials posted in SFIO, as in other premier Investigative agencies viz. CBI, ED, IB. The Committee have recommended year after year that the SFIO being the country's premier corporate fraud investigative agency investigating major fraud cases should be strengthened with adequate permanent cadre and fool-proof fraud detection mechanisms. However, the Ministry have chosen to remain silent on this vital aspect of SFIO as investigative agency. The Committee once again reiterate that the Ministry's proposal for incentivisation would be approved and implemented so as to elicit an optimistic response from candidates as well as existing staff thereby strengthening the backbone of the organisation and ensuring a smooth functioning.

Recommendation (Serial No. 7)

8. The Committee note that National Company Law Tribunal (NCLT) has been notified on 1st June 2016 for faster resolution of corporate disputes and reducing the multiplicity of agencies, thereby promoting 'ease of doing business' in the country. The Committee also note that Company Law Board (CLB) has transferred 5345 cases to NCLT; High Courts have transferred 3834 cases; fresh cases filed with NCLT (upto 31.12.2017) are 13407; NCLT has disposed 14129 cases from 01.06.2016 to 31.12.2017. The Committee are of the opinion that in the coming years, the number of cases with NCLT is expected to grow

tremendously and to dispose of these cases as per prescribed time limit laid in Companies Act, 2013 and the Insolvency and Bankruptcy Code, adequate steps should be taken immediately to further strengthen the infrastructure and manpower resources of NCLT in both quality and quantity. The Committee recommend that to streamline the smooth functioning of NCLT, Members of NCLT should be provided with autonomy and flexibility to recruit supporting staff/officers and steps should be taken for implementing e-courts in all locations of NCLT and for opening more new benches in the country. The Committee desire that in accordance with its laid out objectives, NCLT should become the main instrument of effecting loan recoveries in the banking sector. The Committee may be apprised about the progress made in this regard within three months of the presentation of this Report.

9. In their action taken reply the Ministry of Corporate Affairs have submitted as follows:-

"As on 31.03.2018 the status of institution, disposal and pendency of cases in NCLT was as under:-

Cases received from Company Law Board	:	5,345
Cases received on transfer from High Courts upto 31.3.2018:		3,846
Fresh cases filed with NCLT (upto 31.03.2018)	:	18,621
Disposal of cases from 01.06.2016 to 31.03.2018)	:	17,385
Pendency of cases as on 31.03.2018	:	10,427

Steps taken to strengthen the manpower in the NCLT:-

- Appointments of staff have been made on deputation basis.
- More contractual/outsourced staff has been engaged against vacant posts.
- Recruitment Rules are being finalized on priority so that regular staff can be appointed.

Ministry has provided adequate infrastructure at Principal Bench and 10 jurisdictional Benches of NCLT and incremental requirement is being taken care of as per request received from NCLT from time to time. Regarding manpower, as of now 18 Judicial and 9 Technical Members, apart from President, are in position in NCLT. The Ministry has further assessed the requirement of additional members for existing benches and for new benches as well as vacancies likely to arise in the year on superannuation of incumbents. There is a requirement of 16 more Members (4 Judicial and 12 Technical Members). Advertisements for the posts of 4 Judicial and 12 Technical Members in NCLT have been issued on 12th April 2018. The applications for the posts of Members in NCLT are being invited online. Date of submission of online applications is from 15th April 2018 to 30th May 2018. Government has also approved creation of 320 posts at various levels in NCLT.

As far as autonomy and flexibility in recruiting support staff/officers is concerned, section 418 of the Companies Act provides that the Government shall, in consultation with the Tribunal, provide necessary officers and other employees and these shall discharge their functions under the general superintendence and control of the President, or any other Member to whom powers for exercising such superintendence and control are delegated by him. Accordingly, the Recruitment Rules for the sanctioned posts are being finalized in consultation with NCLT and regular appointments to these posts will start after notification of the Rules. Till the regular posts are filled up, approval has been granted to NCLT for engaging total sufficient number of officers/staff on contractual basis to carry on their functions. To assist the benches, approval has been granted for engagement of Law Research Associates, which are being engaged progressively upon joining of Members.

The e-Court project is being implemented by NIC for all the benches of NCLT. The software for the e-Courts is in development stage and it has been planned to implement e-Courts in Delhi bench of NCLT in the first phase to ensure that shortcomings, if any, be rectified before rollover for all the benches of NCLT. In line with this, all the benches of NCLT have been connected with 4 Mbps internet lease line which will be further augmented depending on the requirement of the software.

Regarding new Benches of NCLT, it is stated that the benches of NCLT are being established in a phased manner taking into account the availability of physical infrastructure, members and other supporting staff etc. At present the NCLT has its Principal Bench at New Delhi and 10 jurisdictional benches at 10 locations viz New Delhi, Ahmedabad, Allahabad, Bengaluru, Chandigarh, Chennai, Guwahati, Hyderabad, Kolkata and Mumbai. Three new benches are proposed at Kochi, Cuttack and Jaipur.

Infrastructure division of this Ministry has continuously ensured to provide requisite infrastructure to NCLT Benches so that they could discharge their assigned responsibilities effectively and efficiently. Wherever office space was inadequate, efforts have regularly been made to provide additional space. Recently, Principal Bench of NCLT, Delhi and NCLT Bench, Mumbai were provided with additional office space so as to ease the office space constraint. Similarly, keeping in view the difficulties of Members of NCLT Bench at Allahabad, the Ministry has advertised the office space requirements and the sole offer received is being examined in the Ministry. Ministry would regularly ensure and take appropriate steps to cater to the infrastructural requirements of different benches of NCLT."

10. The Committee note that 10427 cases are pending with NCLT as on 31.03.2018 and that Recruitment Rules for NCLT are yet to be finalized for appointment of regular staff while contractual staff are being engaged for the time being. The Committee further note that the software for the e-courts is in development stage and that new benches of NCLT are being established in a phased manner. The Committee, while anticipating the rise in the number of cases in NCLT and its role as the main instrument in effecting loan recoveries, reiterate the need for strengthening the infrastructure and manpower resources in NCLT. They desire that the Recruitment Rules for appointment of regular staff should be finalized expeditiously.

Recommendation (Serial No. 9)

11. The Committee note that Section 135 of the Companies Act, 2013, requires every company above the specified thresholds of turnover, or net worth, or net profit, to spend at least two percent of the average net profits earned during three immediately preceding financial years on Corporate Social Responsibility (CSR). The Committee also note that the Ministry of Corporate Affairs has launched National CSR Data Portal in public domain which will facilitate Social audit of CSR projects, besides bringing together CSR contributors, implementers and beneficiaries and aligning CSR activities with national development goals. The Committee further note that till date, the Ministry has received 431 reports from the offices of Regional Directors / Registrar of Companies for non-compliance of Section 135 read with Section 134 (3) (O) of the Companies Act, 2013. The Ministry has accorded permission for initiating penal action against 199 Companies for non-compliance of CSR provisions for the Financial Year 2014-15; of this, till date concerned ROCs have filed prosecution for 108 Companies and 29 Companies have filed compounding application under Section 441 (6) of the Act. Action on remaining 62 Companies are under process with ROCs. While taking note of the steps taken by the Ministry, the Committee would like to draw the attention of the Ministry to the provisions of Section 135(5) of the Companies Act, 2013, which clearly stipulates that "the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for CSR activities". It is often observed that the CSR spend by Companies particularly in mining and industrial areas of tribal and backward regions of the country is minuscule as compared to the profits / income accruing from these areas and much lower than the mandated percentage. Such gross mismatch in local CSR

expenditure *vis-a-vis* CSR expenditure of an organisation at head quarters / other areas is contrary to both the letter and spirit of the well-thought out provisions of the aforementioned Section 135 (5). The Committee, therefore, strongly recommend that Section 135(5) of the Companies Act, 2013 should be strictly adhered to and enforced to preserve the legislative intent of the CSR mandate so that the desired expenditure is incurred in the local area. The Committee desire that the Ministry should regularly monitor scrupulous compliance of CSR provisions by corporates and follow it up with them in a structured manner. The Committee also emphasise that the areas/activities where CSR is taking place should adhere to the laid out provisions of the Act and Rules framed thereunder so that the Committee may be apprised of the concrete steps initiated in this regard and the constraints, if any, faced by the Ministry in the matter. The Committee further recommend that the Ministry should conduct a detailed study of the expenditure and implementation of CSR funds by a sample of 100 Companies and submit a report to the Committee within three months.

12. In their action taken reply the Ministry of Corporate Affairs have submitted as follows:-

"Under the extant law, the first proviso to sub-section (5) of section 135 of the Companies Act, 2013 (the 'Act') reads:

"..... Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities....."

First proviso to section 135 (5) of the Act only requires preference to be given to areas in or around the location of company. As per law, it is the responsibility of the Board of Directors and the CSR Committee to examine and give preference to its 'local areas' where the business operation (in the nature of manufacturing etc.) of the companies are carried out. It centers on the companies concerned to cater to the demands of the immediate community who would be directly impacted/affected by the operations of the companies.

However, MCA will issue a clarification to this effect to the stakeholders stating that *the first proviso to the Section 135(5) has to be followed in letter and spirit. While the Board is free to formulate its CSR Policy and select and fund specific projects, it is obliged to duly consider CSR spend in the local area apart from other projects approval by the Board.*

As per Section 135 of the Act, the Board Committee on CSR is supposed to monitor the implementation of CSR funds. However, *for expenditure on CSR funds & implementation made by 100 companies on sample basis, Ministry will institute a survey on CSR expenditure and implementation through National Foundation of Corporate Social Responsibility (NFCSR) of Indian Institute of Corporate Affairs (IICA) and a detailed report of which will be submitted."*

13. The Committee note that pursuant to their recommendation, the Ministry is issuing a clarification to the stakeholders stating that the first proviso to Section 135(5) regarding giving preference to local area while spending under CSR has to be followed in letter and spirit. The Committee desire that the essence behind the creation of the Corporate Social Responsibility (CSR) framework may be captured by companies and the local area spending principle should be strictly adhered to. Regarding expenditure on CSR funds & implementation made by 100 companies on

sample basis, the Ministry informed that they will institute a survey on CSR expenditure and implementation through National Foundation of Corporate Social Responsibility (NFCSR) of Indian Institute of Corporate Affairs (IICA). The Committee expect that the survey on CSR expenditure and implementation will be undertaken on priority basis and the survey report would be submitted to the Committee in due course.

CHAPTER II
RECOMMENDATIONS / OBSERVATIONS THAT HAVE BEEN
ACCEPTED BY THE GOVERNMENT

Recommendation (Sl. No. 1)

1. The Committee note that the Budget Estimates of the Ministry of Corporate Affairs under Demand No. 17 for the year 2018-19 amounts to Rs 564.15 crore, out of which Rs 537.65 crore is under Revenue Head and Rs 26.50 crore is under Capital Head. While analyzing the Demands for Grants of the Ministry for the last three years, the Committee observe that though there is an increase in Budget Estimates for the year 2018-19 over the previous years, there has been a persistent shortfall of utilization of the budgeted funds for instance in 2014-15 actual expenditure was 226.24 crore (Rs 25.39 crore surrendered) in 2015-16 actual expenditure was Rs 404.39 crore (Rs 10.53 crore surrendered) and in 2016-17 actual expenditure was Rs 397.27 crore (Rs 12.42 crore surrendered) and actual expenditure in the year 2017-18 (upto 29.01.2018) was only Rs 337.15 crore, as compared to RE of Rs 520.84 crore. This trend of under-utilization and consequential surrendering of budgeted funds year after year clearly depicts the Ministry's failure of not only projecting appropriate funds requirement but also their incapability to fully absorb the budgeted funds. The Committee are therefore constrained to reiterate their recommendation that it is high time the Ministry of Corporate Affairs exercises 'due diligence' in their budget formulation, taking a realistic and objective account of their functional needs, and ensure that scarce resources are not unduly blocked. In this connection, the Committee would expect the Ministry of Corporate Affairs to come to terms with their ever-increasing mandate and responsibility not only in the operation of the Companies Act but also other economic statutes like the Insolvency & Bankruptcy code,

Acts governing the professional bodies like the Institute of Chartered Accountants of India (ICAI), Institute of Company Secretaries of India (ICSI) etc. and related laws.

Reply of the Government

The actual expenditure in Financial Year 2017-18 as on 31.03.2018 *vis-a-vis* BE and RE is given below:

(Rs. in crore)					
Section	Budget Estimates (BE) (2017-18)	Revised Estimates (RE) (2017-18)	Actual Expenditure (AE) upto 31.03.2018	Percentage of AE w.r.t. BE	Percentage of AE w.r.t. RE
Revenue	418.54	499.85	445.63	106.47	89.15
Capital	29.50	21.00	20.79	70.47	99.00
Total	448.04	520.85*	466.42	104.10	89.55

*1.00 lakh allocated as token supplementary for opening of new head of account in 4th & final Batch of Supplementary Demands for Grants in March, 2018

Thus, the overall utilization during 2017-18 was Rs. 466.42 crore out of the Revised Allocation of 520.85 crore, which is 104.10% of allocation in BE and 89.55% of allocation in RE 2017-18. As regards the allocation in BE 2018-19, the allocation of Rs. 564.15 crore has been obtained taking into account the likely full-fledged operationalization of newly created bodies - National Company Law Tribunal(NCLT), National Company Law Appellate Tribunal(NCLAT) , Insolvency and Bankruptcy Board of India (IBBI), Investor Education and Protection Fund Authority (IEPFA) during the FY 2018-19. The Ministry set-up NCLT, NCLAT, IBBI and IEPFA in 2016-17, which have started functioning. National Financial Reporting Authority (NFRA) has already been notified and is likely to become functional during the FY 2018-19. Therefore, to take care of expansion of the

aforementioned bodies in 2018-19, this Ministry has obtained enhanced allocation in FY 2018-19 over FY 2017-18.

Savings of funds in FY 2014-15 was on account of non-filling up of posts, non-receipt of bills from contractors, shifting of some offices housed in rented accommodation to Ministry's own buildings and the service providers not meeting the milestones as per the Service Level Agreement (SLA).

Savings of funds in FY 2015-16 was on account of non-filling of posts in the Competition Commission of India (CCI) as well as in attached/subordinate offices, by enforcement of austerity measures/rationalizing expenditure and by surrendering of Rs. 18.89 crore under Non-plan with reference to Budget Estimate for various reasons.

In regard to surrender of funds in FY 2016-17, it is stated that the funds were obtained for meeting the expenses of new organizations like NCLT, NCLAT and IEPF Authority. However, these bodies were established in the middle of Financial Year. As a result some funds were surrendered in the aforementioned year.

In FY 2017-18, the total amount surrendered is Rs. 60.37 crore which is due to the following reasons:

- (i) Reduction in demand raised by NIC on IT services for NCLT resulted in savings in respect of NCLT.
- (ii) Non-filling up of vacant posts in Competition Commission of India, offices of Registrar of Companies, Regional Directors, Official Liquidators.
- (iii) Non-filling up of vacant posts, hiring of less number of consultants, delay in refund of claims to investors, non-implementation of AADHAR biometric authentication system, and economy measures in Ministry.

- (iv) Less utilization of funds by IBBI as it was established in the middle of the financial year.
- (v) Non-setting up of National Financial Reporting Authority (NFRA), National Financial Reporting Appellate Authority (NFRAA) and Special Courts during this financial year.
- (vi) Non-engagement of full strength of Technical Support Group (TSG) for Corporate Data Management (CDM) Scheme.
- (vii) Non-utilization of funds for Early Warning System (EWS) Project of SFIO because the contract for the project has not been awarded during this financial year.
- (viii) Non-utilization of funds in respect of CSR (Corporate Social Responsibility) activities due to postponement of National CSR Awards.

It is submitted that the amount so surrendered due to above reasons was intimated to the Finance Ministry within the stipulated time limit to enable them to use the funds elsewhere.

[Ministry of Corporate Affairs O.M. No. G-20018/06/2018-BGT dated 05.06.2018]

Recommendation (Sl. No. 2)

The Committee note that the Ministry of Corporate affairs is implementing a scheme 'Corporate Data Management' which envisages to create in-house data mining and analytics facility with the objective of disseminating corporate sector data in a structured manner. While analyzing the fund allocation and utilization under Corporate Data Management Scheme, the Committee are constrained to observe persistent shortfall in the utilization of funds allocated for the scheme in the years 2015-16, 2016-17 and 2017-18. For instance, in the year 2015-16 BE and RE for the scheme was Rs 5.00 crore and actual expenditure was Rs 4.55 crore. In the year 2016-17 BE was Rs 10.00 crore which was reduced to Rs 5.00 crore at RE stage, whereas actual expenditure was Rs. 4.98 crore. In the year, 2017-18 BE was Rs 5.50 crore and RE was reduced to Rs 4.50 crore, while the actual upto (31.01.2018) was only Rs 2.69 crore. The Committee thus express their

displeasure that the Ministry was not able to fully absorb the funds allocated for an important scheme like Corporate Data Management, which defeats its very objectives. The Committee recommend that the Ministry with their mandate and responsibility of creating in house data mining and analytics facility should strive towards a system of more efficient utilisation of allocated funds so that objectives of the scheme could be fully achieved.

Reply of the Government

The progress and activities under the CDM Scheme are being reviewed continuously by senior officers of the Ministry. High priority/focus areas were decided in view of immediate requirements of the Ministry for increasing stakeholder awareness as well as improved regulation & monitoring of companies. Consequently, expenditure on various CDM activities were continuously reviewed every financial year to achieve the desired objectives. A brief on utilization of allocated budget under CDM Scheme during the last three financial years are given below:

- (i) During the year 2015-16, allocated BE and RE was Rs. 5.00 crore of which actual expenditure of Rs. 4.55 crore was made and thereby saving an amount of Rs. 0.45 crore. The savings was due to non-engagement of full strength of Technical Support Group (TSG), NIC cloud services being made available free of cost for CDM project by the National Informatics Centre (NIC) and purchase of SAP licenses directly from Original Equipment Manufacturer (OEM).
- (ii) During the year 2016-17, allocated BE was Rs. 10.00 crore which was reduced to Rs. 5.00 crore at RE stage. The RE of Rs. 5.00 crore was adequate to achieve the desired objectives, and consequently an amount of Rs. 4.98 crore was utilized. The savings of Rs. 5.00 crore on BE 2016-17 was due to development of physical

infrastructure for CDM project by the Ministry for which required fund was booked under 'Infrastructure Development', i.e. Non-Plan Capital Head, postponement in procuring advance software tools, delayed implementation of 'research funding' component and slow implementation of capacity building component.

- (iii) During the year 2017-18, allocated BE was Rs. 5.50 crore which was reduced to Rs. 4.50 crore at RE stage. The savings of Rs. 1.00 crore on BE 2017-18 was due to postponement in procuring advance predictive analytics software tools and slow implementation of 'research funding' component. The RE of Rs. 4.50 crore was able to achieve the objectives, and consequently an amount of Rs. 4.16 crore was utilized. The savings of Rs. 0.34 crore was due to non-engagement of full strength of Technical Support Group (TSG) and postponement of payment to MCA21 Service Provider due to unexpected extension of the agreed timeline in extraction of various phases of data transfer.

The CDM scheme was approved till 31.03.2017 and has now been extended up to FY 2019-20 to realize its full potential as the outcomes of the CDM scheme was encouraging. The CDM project has been able to achieve its desired objectives and has been ensuring that underutilization of funds did not have any impact on the planned objectives. The recommendation of the Committee has been duly noted to ensure efficient utilization of allocated funds in the future in order to fully achieve the objectives of the CDM Scheme.

Apart from the objectives defined in the Detailed Project Report (DPR), the CDM was also assigned additional deliverables considering the progress made and additional insights gained within the available MCA21 database. One of such additional deliverables

was development of National CSR Data Portal which was also delivered successfully and launched along with Corporate Data Portal by Hon'ble Minister for Finance and Corporate Affairs on 19.01.2018.

[Ministry of Corporate Affairs O.M. No. G-20018/06/2018-BGT dated 05.06.2018]

Recommendation (Sl. No. 3)

The Committee note that Serious Fraud Investigation Office (SFIO) is a statutory multi-disciplinary Investigating Agency working to unravel corporate frauds. Cases are assigned by Central Government as per provisions of Section 212 of Companies Act, 2013, where Government is of the opinion that it is necessary to investigate into the affairs of a company by SFIO. The Committee note that over last four years i.e. from 2014-15 to 31st January 2018, 166 cases of investigation were assigned for investigation to SFIO, while only 65 cases have been resolved and completed so far; the average time taken for successful prosecution/conviction is stated to be 61.94 months (as on 01.02.2018). Taking into account the available facts on the overall functioning of SFIO, particularly the average time taken for completion of investigation, submitting investigation report, average time taken for prosecution, success rate of prosecution etc., the Committee cannot but express their displeasure over lax functioning of this statutory investigative agency under the Ministry. The Committee would therefore, reiterate their recommendation that the Ministry of Corporate Affairs should conduct a comprehensive review of the functioning of SFIO with a view to upgrading/improving its present level of performance to fulfill its statutory mandate.

The Committee find that of the 133 sanctioned posts in different categories in SFIO, there are as many as 69 vacant posts i.e. more than 50%. Moreover out of these, 75 posts are sanctioned posts for deputationists (50 of these are still vacant). In view of the large

number of vacancies, the Committee has been time and again emphasizing to fill up the existing vacancies with permanent cadre, as they would be more bound with the organisation in performing their functions. The Committee, therefore, re-emphasise that the SFIO should fill its vacancies with adequate permanent cadre and strengthen both its investigative and prosecution arms by developing fool-proof fraud detection mechanisms. In order to bring continuity in the functioning of SFIO, they desire that the post of Director, SFIO should have a fixed tenure as is the case with the posts in CBI and ED.

The Committee also note the establishment of full scale 'early warning system', with the estimated cost of Rs 123.68 crore was approved in June 2017. However, as the lowest financial bid was around 100 percent more than the initial estimated project cost, the project at present is stated to be under reconsideration. The Ministry had earlier set up fraud detection modules such as Early Warning System and Forensic Lab, but without any visible benefits accruing therefrom in terms of investigation outcomes. The Committee would therefore recommend that precious funds should not be blocked in such experiments which have no investigative value for the organisation. Early Warning Systems should be deployed only if the Ministry/SFIO are fully satisfied about their proven utility for detection of fraud and investigation of cases and the Ministry is well-equipped to use such systems *real-time* for investigation of cases and their successful prosecution. In this regard, the Ministry should also pay attention to the quality of manpower deployed for investigation and closely monitor their work for fruitful outcomes. The Committee desire that SFIO should be adequately strengthened for particularly detecting and investigating all commercial/corporate frauds in a professional manner. The Committee would also like

to be apprised about the complaints-redressal mechanism in the SFIO and the action taken by them in respect of complaints received in the last three years.

Reply of the Government

There are various factors which are affecting the speed of investigation and effectiveness of prosecution/conviction in SFIO. Acute shortage of manpower coupled with increased assignment of investigations have largely slowed the speed of investigations. Further, wherever multiple agencies are involved in investigation of frauds assigned to SFIO, obtaining of records/information seized by these agencies is a time-consuming process. With a view to address these factors, the Ministry has been making concerted efforts in coordination with DOP&T & UPSC as well as ensuring an effective coordination mechanism with other Investigation Agencies.

Recruitment to 42 posts of SFIO, out of total 133 sanctioned posts, is through 'Direct Recruitment (DR)'. Further, in order to provide career opportunities to DR officials, and also to ensure progressive growth of 'permanent cadre' in the office, provision of 'appointment through promotion' has been made in the Recruitment Rules (RRs) of **36** higher grade posts. Thus, strength of permanent cadre officials will increase over the years. Meanwhile, as promotion of DR officials, who have been appointment recently, to 'higher grade posts' would require completion of mandatory 'residency period' in lower grades as per relevant Recruitment Rules, provision for 'deputation' has been retained for the interim period.

Out of 42 posts, total 27 posts are presently filled up. The Ministry has already submitted requisition to UPSC/SSC for filling up 15 more posts of DR. Besides this, UPSC has been requested to nominate 02 DR candidates from the Reserve Panel. Since the last

report, 05 DR officials have resigned from their posts, either on appointment in some other organisations or on personal grounds.

As officers on deputation join their posts for a fixed tenure, they have to revert to their cadre after expiry of the tenure. Since beginning of this year, 02 officers have already repatriated from SFIO. Out of 75 posts under Deputation (ISTC), 23 posts are presently filled up, and offer of appointment stands issued to 03 more candidates. Further, 57 vacancies (including anticipated vacancies) have been advertised for invitation of application for various posts. Due to poor response, the last dates for receipt of applications have been extended multiple times. Meanwhile, the Ministry has mooted a proposal to Department of Expenditure (DoE) for allowing **Special Incentive Allowance/Investigation Allowance @ 20% of Basic Pay** to officials posted in SFIO, as in other premier Investigative agencies viz. CBI, ED, IB. This will incentivize postings in the office, and elicit positive response from candidates. Better remuneration would also help in better retention of DR officials in SFIO. Prior to implementation of 7th Central Pay Commission (7th CPC), SFIO officers were getting Investigation Allowance (maximum Rs. 2000/-). Furthermore, the Ministry has approached DoPT for exemption from UPSC consultation while making appointments to certain posts, and also to treat SFIO's vacancies as open vacancies.

Out of total 16 encadred posts in SFIO, 11 are presently filled up. The Ministry has approached Department of Legal Affairs for their No Objection Certificate (NOC) so as to fill up 03 Indian Law Service (ILS) vacant posts through other means. The Ministry is also pursuing with NIC for filling up 02 vacant posts.

The Ministry has approved engagement of experts in SFIO as Consultants of various fields, under Rule 3 and 4 (d) of the Companies (Inspection, Investigation & Inquiry) Rules, 2014. Presently, 38 consultants/experts are engaged in the office.

Appointment to the post of Director, SFIO is made on deputation basis, from amongst officers not below the rank of Joint Secretary to the Govt. of India, and having knowledge and experience in dealing with matters of corporate affairs. As Director, SFIO is deputation post, tenure of incumbents is governed by deputation rules of DoPT.

Early warning System (EWS): On account of mismatch in the financial bids received and the estimates, the project in its original form is being shelved.

The Computer Forensic and Data Mining Lab (CFDML) is actively assisting the investigation Units in acquiring digital data in forensically sound manner and process the same, which is used by the investigation units in their investigations.

Till date, 43 cases have been processed/ is under process in the CFDML. Databases have been analysed in respect of 15 cases and the analysis reports have been prepared and shared with the Investigation Units. In respect of 20 cases, data has been processed and shared with the Investigation Units.

Recently, the Ministry of Electronics and Information Technology (MeitY) has notified the CFDML, SFIO as Examiner of Electronic Evidence under Section 79A of IT Act, 2000.

SFIO has no mandate under the Companies Act for redressing complaints received. All the complaints received at SFIO are handled as per a Standard Operating Procedure. The complaints are first screened by Supervisory Officers for their gravity &

serious repercussions with reference to amount involved, number of persons affected, public interest involved, modus operandi being of complex nature, which greatly dents public confidence. The complaints of serious nature are examined in depth and Research Reports prepared which are submitted to the Ministry for appropriate action. All the complaints received at SFIO, from various sources, are forwarded to respective Registrar of Companies (ROCs)/Regional Directors (RD) for appropriate action as per the directions of Ministry of Corporate Affairs. Earlier, all complaints received in SFIO were forwarded to Ministry of Corporate Affairs for appropriate action.

The total number of complaints received in SFIO in the last three financial years and forwarded to the respective ROCs is given below:-

Year	Number of complaints
1-4-2015 to 31-3-2016	1294
1-4-2016 to 31-3-2017	1196
1-4-2017 to 31-3-2018	923

[Ministry of Corporate Affairs O.M. No. G-20018/06/2018-BGT dated 05.06.2018]

Comments of the Committee

(Please see Para No. 7 of Chapter I)

Recommendation (Sl. No. 4)

The Committee note that the number of cases pending with RoCs was 49,433 as on 31.12.2017. During the years 2014-15 to 2017-18 (till 31.12.2017) in 18003 number of cases prosecutions have been filed and 14226 cases have been disposed of during the said period, with Rs 8,45,25,530 awarded as penalty. Keeping in view the huge pendency with RoCs, the Committee observe that RoCs has totally failed in developing an

efficacious system and process for investigation and disposal of the cases assigned to them. They feel that the major reason for this dismal performance in disposal of cases is lack of capacity building and infrastructure at all levels in RoCs. The Committee, therefore, reiterate their recommendation that there should be enhanced capacity building at all levels in RoCs along with upgradation of IT infrastructure in order to handle the huge work load. The Committee desire that RoCs as mandated under Section 396 of the Companies Act, 2013, would gainfully apply all tools systematically for concrete outcomes by way of timely investigation and disposal of cases assigned to them. The Committee recommend that the Ministry should initiate proactive steps to follow up and expedite pendency cases with RoCs under intimation to the Committee.

Reply of the Government

Pursuant to approval from the Corporate Affairs Minister, the Ministry through field offices, undertook a Special Arrears Clearance Drive 2017-18, during which prosecutions against companies/officers-in-default were identified to be withdrawn, based on approved criteria and separate action, as and when found viable, under Section 248 of the Companies Act, 2013 for striking off, was directed to be taken against the said companies. Further, a Standard Operating Procedure for Prosecutions has been issued to all the field offices for bringing uniformity in filing of prosecutions and also to file consolidated prosecution of various violations found under the Companies Act, 2013 which will result into reduction of number of Prosecutions in future.

[Ministry of Corporate Affairs O.M. No. G-20018/06/2018-BGT dated 05.06.2018]

Recommendation (Sl. No. 5)

The Committee note that Investor Education and Protection Fund (IEPF) Authority was constituted on 7th September 2016 with the objective to make refunds of shares, unclaimed dividends, matured deposits/debentures etc., transferred to IEPF and to promote investor education, awareness and protection. Shares in respect of which dividend has not been paid or claimed for seven or more consecutive years or more shall be transferred by the company to IEPF Authority. An amount of Rs 1989.76 crore has been credited into the account of IEPF (till 11.01.2018); 1227 Companies have transferred shares worth Rs. 43.9 crore. The Committee further note that as on 25.01.2018, IEPF Authority has received 642 claims (since 07.09.2016) for refund, out of which 85 claims has been refunded, 178 claims has been rejected and 379 claims remain pending for rectifications by Companies. As pointed out by the Committee in their earlier report, the number of applications for refund is expected to increase manifold in coming years. They would therefore stress that the process of refund of claims by IEPF Authority needs to be meticulously and expeditiously carried out. It has been informed that a joint campaign for creating investor awareness has been planned in association with Reserve Bank of India, Securities and Exchange Board of India and Department of Consumer Affairs. The Committee desire that this joint campaign should be carried out in such a way that it must reach gullible investors residing in remotest areas of the country, making them aware about their rights as a investor and the pros and cons of investing in different instrument/schemes. The Committee further advise that such awareness campaign should be done upto panchayat level and the local MPs/MLAs should be involved therein.

Reply of the Government

IEPF has been established under section 205 C of the Companies Act, 1956 by way of companies (Amendment) Act, 1999 for promotion of investors awareness and protection of interests of investors. The provisions related to transfer of shares to IEPF were introduced by the Companies Act, 2013.

Due to transfer of shares as per provisions of Companies Act, 2013, the number of claims being filed with IEPF Authority has increased. The suggestion of the Hon'ble committee to process the claims expeditiously and meticulously by IEPF Authority has been noted. For settlement of claims, the Authority is pursuing the matter with companies for timely sending the verification reports. Review of IEPF Authority (Accounting, Audit, Transfer and Refund), Rules, 2016 is being done to simplify the process of settlement of claims. This is likely to expedite the process of refund.

During the year 2017-18, 1323 number of claims were received out of which 163 number of claims have been approved, 467 claims were rejected and 314 claims were pending for rectification by companies. The authority is making efforts to expedite settlement of claims and to simplify the process of refund through automatization.

IEPF Authority is conducting awareness programme in rural areas through CSC-e governance and in urban/semi urban area through the Professional Institutes. During the year 2017-18, 5519 Investor Awareness programmes have been conducted through the Professional Institutes and CSC e governance services India limited. The suggestion of the Hon'ble committee to involve local MPs/MLAs in the awareness campaign has been noted and these organizations will be instructed to involve these dignitaries in the future programmes.

[Ministry of Corporate Affairs O.M. No. G-20018/06/2018-BGT dated 05.06.2018]

Recommendation (Sl. No. 6)

The Committee note that the Competition Commission of India (CCI) was established in March 2009 with the objectives 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. CCI has the powers to regulate mergers or combinations and to reverse mergers or combinations, if such mergers or combinations have or likely to have an appreciable adverse effect on competition in India. The Committee further note that as on 31.01.2018, 223 cases are pending with CCI; out of these 176 cases are pending for more than one year. Further, a total of 564 combinations notices have been filed, out of which 15 notices were pending. They also note that even after nine years since it commenced operation, the CCI continues to struggle with pendency of cases. The Committee desire that CCI should make earnest efforts to dispose of the cases in a time-bound manner and concrete steps should be taken to further strengthen the infrastructure and manpower resources of CCI to show tangible results in timely disposal of cases. The Committee observe that CCI has not been proactive enough in taking cognisance of unfair trade practices inimical to consumer interest, such as, charging of extra charges (outside the fare) by airlines companies for blocking/reservation of specific seats to the disadvantage of large number of passengers, predatory pricing or price war in the telecom sector etc. The Committee thus strongly recommend that CCI should in keeping with its mandate, proactively intervene in all such cases of unfair/predatory pricing impinging on vast majority of consumers and other stakeholders.

Reply of the Government

As on 30th April 2018, the Commission, has received, 950 cases relating to anti-competitive conduct under section 3 and 4 of the Competition Act. Out of these, the Commission has already decided 729 cases. Thus, final orders have been passed by the Commission in 77% of the cases. Out of these, 4 cases have been set aside by various courts and out of the remaining 217 cases, 116 are pending with the DG and 101 are under the consideration of the Commission.

Further, the Commission has received 575 notices relating to combinations (which includes notices filed u/s 6(2) of the Act: 507-Form I, 58-Form II and u/s 6(5) of the Act: 10- Form III). Out of these, 569 notices have been disposed off and remaining 6 (u/s 6 (2) of the Act: 4-Form-I and 2-Form-II) notices are under process and would be disposed off in due course.

Against the sanctioned strength of 197 posts for the Commission (CCI) and the office of the Director General (DG, CCI), 126 officers are in position as on 30.04.2018. The vacant posts in CCI pertain to deputation, direct recruitment and promotion quota. All vacant posts in the O/o DG, CCI pertain to deputation quota.

In order to fill up vacant posts of direct recruitment quota in CCI, a fresh round of direct recruitment (i.e. 6th round) was initiated by advertising 31 posts (17 Professional staff and 14 Support Staff) on 30.06.2017. The final results of the examination were declared on 27.03.2018 and 20 candidates (12 Professional staff and 08 Support Staff) have been declared as successful for appointment in the Commission.

In respect of the office of the DG, CCI, 08 candidates were recently selected for appointment as Joint Director General and Dy. Director General and 05 of them have already joined duty in that office.

Action to fill up some more posts on deputation basis in CCI and DG's office is being considered.

In regard to unfair trade practices/predatory pricing interest etc., Section 4(2) (a) (ii) of the Competition Act, 2002 prohibits an enterprise from abusing its dominant position by imposing unfair or discriminatory price, directly or indirectly, in purchase or sale (including predatory price) of goods or services. Accordingly, CCI can initiate investigation under Section 26 (1) of the Act against a dominant enterprise in a relevant market if it imposes unfair or discriminatory price. Further, in terms of Section 3(3) of the Act, CCI can initiate investigation if enterprises operating at horizontal level directly or indirectly determine sale and purchase price of goods or services.

CCI has not taken up any case pertaining to charging of extra charges for blocking/ reservation of specific seats by airlines companies. However, there are some cases related to civil aviation sector being handled by CCI, which primarily related to concerted parallel pricing in airfares, fixing fuel surcharge for providing air cargo transport services and surge pricing.

The Commission has received five (5) Information under Section 19 (1) (a) of the Act, alleging anti-competitive conduct/ practices in telecom sector.

[Ministry of Corporate Affairs O.M. No. G-20018/06/2018-BGT dated 05.06.2018]

Recommendation (Sl. No. 7)

The Committee note that National Company Law Tribunal (NCLT) has been notified on 1st June 2016 for faster resolution of corporate disputes and reducing the multiplicity of agencies, thereby promoting 'ease of doing business' in the country. The Committee also note that Company Law Board (CLB) has transferred 5345 cases to NCLT; High Courts have transferred 3834 cases; fresh cases filed with NCLT (upto 31.12.2017) are 13407; NCLT has disposed 14129 cases from 01.06.2016 to 31.12.2017. The Committee are of the opinion that in the coming years, the number of cases with NCLT is expected to grow tremendously and to dispose of these cases as per prescribed time limit laid in Companies Act, 2013 and the Insolvency and Bankruptcy Code, adequate steps should be taken immediately to further strengthen the infrastructure and manpower resources of NCLT in both quality and quantity. The Committee recommend that to streamline the smooth functioning of NCLT, Members of NCLT should be provided with autonomy and flexibility to recruit supporting staff/officers and steps should be taken for implementing e-courts in all locations of NCLT and for opening more new benches in the country. The Committee desire that in accordance with its laid out objectives, NCLT should become the main instrument of effecting loan recoveries in the banking sector. The Committee may be apprised about the progress made in this regard within three months of the presentation of this Report.

Reply of the Government

As on 31.03.2018 the status of institution, disposal and pendency of cases in NCLT was as under:-

Cases received from Company Law Board	:	5,345
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Cases received on transfer from High Courts upto 31.3.2018:	3,846
Fresh cases filed with NCLT (upto 31.03.2018)	: 18,621
Disposal of cases from 01.06.2016 to 31.03.2018)	: 17,385
Pendency of cases as on 31.03.2018	: 10,427

Steps taken to strengthen the manpower in the NCLT:-

- Appointments of staff have been made on deputation basis.
- More contractual/outsourced staff has been engaged against vacant posts.
- Recruitment Rules are being finalized on priority so that regular staff can be appointed.

Ministry has provided adequate infrastructure at Principal Bench and 10 jurisdictional Benches of NCLT and incremental requirement is being taken care of as per request received from NCLT from time to time. Regarding manpower, as of now 18 Judicial and 9 Technical Members, apart from President, are in position in NCLT. The Ministry has further assessed the requirement of additional members for existing benches and for new benches as well as vacancies likely to arise in the year on superannuation of incumbents. There is a requirement of 16 more Members (4 Judicial and 12 Technical Members). Advertisements for the posts of 4 Judicial and 12 Technical Members in NCLT have been issued on 12th April 2018. The applications for the posts of Members in NCLT are being invited online. Date of submission of online applications is from 15th April 2018 to 30th May 2018. Government has also approved creation of 320 posts at various levels in NCLT.

As far as autonomy and flexibility in recruiting support staff/officers is concerned, section 418 of the Companies Act provides that the Government shall, in consultation with the Tribunal, provide necessary officers and other employees and these shall discharge their functions under the general superintendence and control of the President, or any other Member to whom powers for exercising such superintendence and control are delegated by him. Accordingly, the Recruitment Rules for the sanctioned posts are being finalized in consultation with NCLT and regular appointments to these posts will start after notification of the Rules. Till the regular posts are filled up, approval has been granted to NCLT for engaging total sufficient number of officers/staff on contractual basis to carry on their functions. To assist the benches, approval has been granted for engagement of Law Research Associates, which are being engaged progressively upon joining of Members.

The e-Court project is being implemented by NIC for all the benches of NCLT. The software for the e-Courts is in development stage and it has been planned to implement e-Courts in Delhi bench of NCLT in the first phase to ensure that shortcomings, if any, be rectified before rollover for all the benches of NCLT. In line with this, all the benches of NCLT have been connected with 4 Mbps internet lease line which will be further augmented depending on the requirement of the software.

Regarding new Benches of NCLT, it is stated that the benches of NCLT are being established in a phased manner taking into account the availability of physical infrastructure, members and other supporting staff etc. At present the NCLT has its Principal Bench at New Delhi and 10 jurisdictional benches at 10 locations viz New Delhi, Ahmedabad, Allahabad, Bengaluru, Chandigarh, Chennai, Guwahati, Hyderabad, Kolkata and Mumbai. Three new benches are proposed at Kochi, Cuttack and Jaipur.

Infrastructure division of this Ministry has continuously ensured to provide requisite infrastructure to NCLT Benches so that they could discharge their assigned responsibilities effectively and efficiently. Wherever office space was inadequate, efforts have regularly been made to provide additional space. Recently, Principal Bench of NCLT, Delhi and NCLT Bench, Mumbai were provided with additional office space so as to ease the office space constraint. Similarly, keeping in view the difficulties of Members of NCLT Bench at Allahabad, the Ministry has advertised the office space requirements and the sole offer received is being examined in the Ministry. Ministry would regularly ensure and take appropriate steps to cater to the infrastructural requirements of different benches of NCLT.

[Ministry of Corporate Affairs O.M. No. G-20018/06/2018-BGT dated 05.06.2018]

Comments of the Committee

(Please see Para No. 10 of Chapter I)

Recommendation (Sl. No. 8)

The Committee note that the term 'Shell Company' has not been defined under the Companies Act, 2013. However, based on inputs received from the Members of Task Force co-chaired by Revenue Secretary and Secretary, Ministry of Corporate Affairs, the Ministry has decided to attempt a commonly accepted definition and attributes of 'Shell Companies'. The Ministry have stated that presently, it is not necessary to amend the Companies Act, 2013 to provide for definition of Shell Companies. The Committee further note that Registrar of Companies (RoCs) had identified 2.97 lakh companies which were defaulting in filing of financial statements or annual returns for two or more continuous years and *prima facie* were not in operation. Consequently, 2.26 lakh companies were struck off from the registry. Out of these entities, some may have been merely dormant

companies, without any fraudulent intent. Therefore, it is necessary that while cracking down on shell companies, the Ministry needs to make distinction between those guilty of fraud and those irregular with filings. The Committee thus are of the opinion that to avoid any legal ambiguity and pre-empt avoidable litigation in the absence of a clear-cut definition of 'Shell Companies' in the Companies Act, 2013, the definition of 'Shell Companies' may be suitably included in the Act itself by bringing in the element of 'fraudulent' intent. The Committee further desire that to prevent corporate misfeasance/malfeasance, there should be *real-time* data-sharing amongst Ministry of Corporate Affairs, and other regulatory enforcement agencies, such as, CBI, ED, DRI, CBDT, SFIO, Department of Financial Services, Financial Intelligent Unit, Central Economic Intelligence Bureau and SEBI. The Committee may be apprised of the progress made in this regard within three months.

Reply of the Government

The definition and attributes of shell companies are under consideration of the working group constituted by the Task Force on shell companies for placing the same before the task force for finalization.

Shell/Suspected Companies: The term 'Shell Company' is not defined under the Companies Act. However, the removal of names of the companies which are not in operation or conducting any business, is a continuous process. The Registrar of Companies (ROCs) had identified 2.97 lakh companies during 2017-18 which were not filing their Financial Statements or Annual Returns for a continuous period of two or more financial years and, prima facie, were not conducting any business or in operation. Out of such identified companies, ROCs have removed the names of 2,26,166 such companies

as of now from the register of companies by following the due process under Section 248 of the Companies Act, 2013. Section 250 of the Act provides that where a company stands dissolved under Section 248(5) of Act, it shall cease to operate as a company and the certificate of incorporation issued to it shall be deemed to have been cancelled from the date of such removal. Consequently, the banks put restrictions on the operation of bank accounts of such removed companies by their ex-directors till such companies are revived under Section 252 of the Act. In addition to the above the Central Government has already ordered investigation against 68 companies (which have deposited Rs. 25 cr. or more) u/s 216 read with 210 (1) (c) of the Companies Act, 2013 for huge sums deposited in Bank accounts and withdrawn in an exceptional manner post demonetization. The investigations are underway.

Further, in the Second Drive under section 248 of the Act, a total of 2,25,910 companies have been identified for action under Section 248 on the basis of due filings up to Financial Year 2016-17. Further exclusion as per Rules shall be made by ROCs. This is a continuous exercise on the part of RoCs.

Disqualified Directors: During the current financial year 2017-18 and as of now the Government has identified 3,09,619 directors as disqualified u/s 164(2)(a) read with Section 167(1) of the Companies Act, 2013 for non-filing of Financial Statements or Annual Returns for a continuous period of immediately preceding 3(three) financial years (2013-14, 2014-15 & 2015-16). Out of the above mentioned disqualified directors, 2,10,116 number of disqualified directors were directors on the Board of Struck off companies.

Condonation of Delay Scheme (CoDS), 2018: Government had announced Condonation of Delay Scheme (CoDS), 2018 effective from 01.01.2018 to 01.05.2018 for the defaulting companies to regularize their pending statutory returns. Accordingly, a total of 13,993 number of companies have availed CODS to become compliant companies.

As regard to real time data sharing amongst Ministry of Corporate Affairs and all other regulatory enforcement agencies, such as, CBI, ED, DRI, CBDT, SFIO, Department of Financial Services, Financial Intelligent Unit, Central Economic Intelligence Bureau and SEBI, it is submitted that the Standard Operating Procedure (SOP) recommended by the Committee of Secretaries (COS) in their meeting held on 15.05.2017, has been circulated amongst all Law Enforcement Agencies for necessary compliance.

[Ministry of Corporate Affairs O.M. No. G-20018/06/2018-BGT dated 05.06.2018]

Recommendation (Sl. No.9)

The Committee note that Section 135 of the Companies Act, 2013, requires every company above the specified thresholds of turnover, or net worth, or net profit, to spend at least two percent of the average net profits earned during three immediately preceding financial years on Corporate Social Responsibility (CSR). The Committee also note that the Ministry of Corporate Affairs has launched National CSR Data Portal in public domain which will facilitate Social audit of CSR projects, besides bringing together CSR contributors, implementers and beneficiaries and aligning CSR activities with national development goals. The Committee further note that till date, the Ministry has received 431 reports from the offices of Regional Directors / Registrar of Companies for non-compliance of Section 135 read with Section 134 (3) (O) of the Companies Act, 2013. The Ministry has accorded permission for initiating penal action against 199 Companies for

non-compliance of CSR provisions for the Financial Year 2014-15; of this, till date concerned ROCs have filed prosecution for 108 Companies and 29 Companies have filed compounding application under Section 441 (6) of the Act. Action on remaining 62 Companies are under process with ROCs. While taking note of the steps taken by the Ministry, the Committee would like to draw the attention of the Ministry to the provisions of Section 135(5) of the Companies Act, 2013, which clearly stipulates that "the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for CSR activities". It is often observed that the CSR spend by Companies particularly in mining and industrial areas of tribal and backward regions of the country is minuscule as compared to the profits / income accruing from these areas and much lower than the mandated percentage. Such gross mismatch in local CSR expenditure *vis-a-vis* CSR expenditure of an organisation at head quarters / other areas is contrary to both the letter and spirit of the well-thought out provisions of the aforementioned Section 135 (5). The Committee, therefore, strongly recommend that Section 135(5) of the Companies Act, 2013 should be strictly adhered to and enforced to preserve the legislative intent of the CSR mandate so that the desired expenditure is incurred in the local area. The Committee desire that the Ministry should regularly monitor scrupulous compliance of CSR provisions by corporates and follow it up with them in a structured manner. The Committee also emphasise that the areas/activities where CSR is taking place should adhere to the laid out provisions of the Act and Rules framed thereunder so that the Committee may be apprised of the concrete steps initiated in this regard and the constraints, if any, faced by the Ministry in the matter. The Committee further recommend that the Ministry should conduct a detailed study of the expenditure

and implementation of CSR funds by a sample of 100 Companies and submit a report to the Committee within three months.

Reply of the Government

Under the extant law, the first proviso to sub-section (5) of section 135 of the Companies Act, 2013 (the 'Act') reads:

“..... Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities.....”

First proviso to section 135 (5) of the Act only requires preference to be given to areas in or around the location of company. As per law, it is the responsibility of the Board of Directors and the CSR Committee to examine and give preference to its 'local areas' where the business operation (in the nature of manufacturing etc.) of the companies are carried out. It centers on the companies concerned to cater to the demands of the immediate community who would be directly impacted/affected by the operations of the companies.

However, MCA will issue a clarification to this effect to the stakeholders stating that *the first proviso to the Section 135(5) has to be followed in letter and spirit. While the Board is free to formulate its CSR Policy and select and fund specific projects, it is obliged to duly consider CSR spend in the local area apart from other projects approval by the Board.*

As per Section 135 of the Act, the Board Committee on CSR is supposed to monitor the implementation of CSR funds. However, *for expenditure on CSR funds &*

implementation made by 100 companies on sample basis, Ministry will institute a survey on CSR expenditure and implementation through National Foundation of Corporate Social Responsibility (NFCSR) of Indian Institute of Corporate Affairs (IICA) and a detailed report of which will be submitted.

[Ministry of Corporate Affairs O.M. No. G-20018/06/2018-BGT dated 05.06.2018]

Comments of the Committee

(Please see Para No. 13 of Chapter I)

Recommendation (Sl. No. 10)

In the light of instances of corporate fraud/malfeasance reported in recent years, the Committee would recommend that the Ministry of Corporate Affairs, as the nodal agency, should develop an exclusive web portal for registering complaints from individuals/entities including whistle-blowers. The Ministry should have the responsibility to process these complaints and refer them to the appropriate agency including SFIO for investigation, reporting and prosecution. Strict time-lines should be fixed to address and resolve these complaints, which should also be duly reflected in the Annual Report of the Ministry presented to Parliament every year to bring not only the problems which arise but also the behaviour pattern of companies in public domain.

Reply of the Government

MCA 21 already has functionality to enable registration by members of public, the complaints, violation of Companies Act, any frauds or malfeasance being reported against any company its promoters/directors etc. The complaints as received through said

functionality are examined and analysed through its field offices (RoCs) for appropriation against the companies and its directors.

Committee's recommendation regarding reflecting the details of action taken on resolutions of complaints in the Annual Report of the Ministry has been noted for compliance.

[Ministry of Corporate Affairs O.M. No. G-20018/06/2018-BGT dated 05.06.2018]

CHAPTER - III

**RECOMMENDATIONS/OBSERVATIONS WHICH THE COMMITTEE DO NOT
DESIRE TO PURSUE IN VIEW OF THE GOVERNMENT'S REPLIES**

NIL

CHAPTER - IV

**RECOMMENDATIONS/OBSERVATIONS IN RESPECT OF WHICH REPLIES OF
GOVERNMENT HAVE NOT BEEN ACCEPTED BY THE COMMITTEE**

NIL

CHAPTER - V

**RECOMMENDATIONS/OBSERVATIONS IN RESPECT OF WHICH FINAL
REPLIES BY THE GOVERNMENT ARE STILL AWAITED**

NIL

**NEW DELHI
06 August, 2018
15 Shravana, 1939 (Saka)**

**DR. M. VEERAPPA MOILY,
Chairperson,
Standing Committee on Finance**

**Minutes of the Twenty First sitting of the Standing Committee on Finance
The Committee sat on Monday, the 6 August, 2018 from 1500 hrs to 1600 hrs,
Committee Room No. 3, Parliament House Annexe, Extn Block A New Delhi.**

PRESENT

Dr. M. Veerappa Moily - Chairperson

LOK SABHA

2. Shri Kunwar Pushpendra Singh Chandel
3. Shri Bandaru Dattatreya
4. Shri Nishikant Dubey
5. Shri Venkatesh Babu T.G.
6. Shri P.C. Gaddigoudar
7. Shri Shyama Charan Gupta
8. Shri Chandrakant Khaire
9. Shri Bhartruhari Mahtab
10. Shri Rayapati Sambasiva Rao
11. Prof. Saugata Roy
12. Shri Rajiv Pratap Rudy
13. Shri Gopal Shetty
14. Dr. Kirit Somaiya
15. Shri Dinesh Trivedi
16. Shri Shivkumar Udasi

RAJYA SABHA

17. Shri Anil Desai
18. Shri Mahesh Poddar
19. Dr. Mahendra Prasad
20. Dr. Manmohan Singh

SECRETARIAT

- | | | |
|---------------------------------|---|---------------------|
| 1. Shri R.C. Tiwari | - | Joint Secretary |
| 2. Shri Rajesh Ranjan Kumar | - | Director |
| 3. Shri Ramkumar Suryanarayanan | - | Additional Director |
| 4. Shri Kulmohan Singh Arora | - | Deputy Secretary |

2. At the outset, the Chairperson welcomed the Members to the sitting of the Committee, thereafter, the Committee took up the following draft reports for consideration and adoption:

- (i) Draft Report on "The Chit Funds (Amendment) Bill, 2018"
- (ii) Draft Report on Action Taken by the Government on the Recommendations contained in the 57th Report on Demands For Grants (2018-19) of the Ministry of Finance (Departments of Economics Affairs, Expenditure, Financial Services and Investment and Public Asset Management.
- (iii) Draft Report on Action Taken by the Government on the Recommendations contained in the 58th Report on Demands For Grants (2018-19) of the Ministry of Finance (Department of Revenue).
- (iv) Draft Report on Action Taken by the Government on the Recommendations contained in the 59th Report on Demands For Grants (2018-19) of the Ministry of Corporate Affairs.
- (v) Draft Report on Action Taken by the Government on the Recommendations contained in the 60th Report on Demands For Grants (2018-19) of the Ministry of Planning.
- (vi) Draft Report on Action Taken by the Government on the Recommendations contained in the 61st Report on Demands For Grants (2018-19) of the Ministry of Statistics and Programme Implementation.

After some deliberations the Committee adopted the above draft Reports with some minor modifications as suggested by Members. The Committee authorised the Chairperson to finalise the Reports in the light of the modifications suggested and present the same to Parliament.

The Committee then adjourned.

APPENDIX

(Vide Para 4 of the Introduction)

ANALYSIS OF THE ACTION TAKEN BY THE GOVERNMENT ON THE RECOMMENDATIONS CONTAINED IN THE FIFTY NINTH REPORT OF THE STANDING COMMITTEE ON FINANCE (SIXTEENTH LOK SABHA) ON DEMANDS FOR GRANTS (2018-19) OF THE MINISTRY OF CORPORATE AFFAIRS

	Total	% of total
(i) Total number of Recommendations	10	
(ii) Recommendations/Observations which have been accepted by the Government (vide Recommendation at Sl. Nos. 1,2,3,4,5,6,7,8,9 & 10)	10	100%
(iii) Recommendations/Observations which the Committee do not desire to pursue in view of the Government's replies	Nil	0.00
(iv) Recommendations/Observations in respect of which replies of the Government have not been accepted by the Committee	Nil	0.00
(v) Recommendations/Observations in respect of which final reply of the Government are still awaited	Nil	0.00