



Corporates— Size Matters

The size of a corporate matters in many ways, particularly while taking decision as to expansion or reconstruction of business. The article focuses on the broad parameters under various corporate laws to analyse how the growth in the size of corporate necessitates careful decision-making by the managements on a host of issues.

Globally the size of a corporate is a condition for being a level player and competitive. An entrepreneur always dreams of a big size. The size does matter when it comes to having collaborations, attracting talent, drawing cheaper funds, enticing the customer, influencing politics, getting work done from statutory authorities or minimising the cost of production. The size of an enterprise builds a magnetism in itself, which pulls everyone to its advantage. But on the other hand it invites many compliances and formalities. It draws special attention of the legislatures to impose or not further taxes, creates anti-forces and so on. If entrepreneurship is there, if resources are there, if management capabilities are there, if team is there then there is no dearth of business prospects and one should always think high in terms of size. Media has twisted the definition of Corporate Size from net worth or

The author is a member of the Institute. He can be reached at jainok@hotmail.com



**Mahendra
Badjatya**

profits to market capitalisation or turnover. Public has also taken for granted such definition and is happy listening stories about reliance group or the likes as it's a worldwide fancy. Talking in terms of large figures inspires all concerned.

In our country, the growth of corporates is good but still there are many discriminations and bottlenecks which restrict the growth. Some of them are the MAT TAX, deemed dividend for closely held companies, double taxation on dividend, too many formalities on the small Private Limited Companies, comparatively higher tax rates, the restriction under section 297 of The Companies Act for certain transactions, restrictions on unsecured loans under section 3 (1)(iii) and under section 58A of the Companies Act, NBFC regulations for finance and investment companies, cumbersome exit route for

winding up and so on.

Earlier the MRTP Act pegged the size of assets up to Rs. 100 crore. After the exodus of the same in 1985 the spurt in size was there, and now within 20 years, we are able to reach the size of 1 lac crore. So, higher the limits of financial discipline, higher will be the growth. But at the same time, the size of manipulations, frauds malpractices, etc. will also be high. The need is to watch unprecedented growth or fall in the overall business of a corporate or a group. The regulating agency should be so intelligent, wise, armed, empowered, uninfluenced and professional that in their information system it should be immediately reflected that someone is not only wrong but they should be able to control the first step in the wrong direction. This is required in Stock Exchange, SEBI, RBI, Banking System, Depositories, etc. keeping in view that the size of malpractices will also be more but the speed and growth of bonafide entities should not be stalled.

The size of a corporate matters in various ways, particularly while taking decision as to expansion or reconstruction of business. In this article only the corporates are discussed with the main focus on the broad parameters under various corporate laws like Companies Act, Corporate Taxation, SEBI, Competition Act, Stock Exchanges, etc. so as to show how the growth in the size of corporate is, makes it necessary for the management to take an informed decision accordingly.



Authorised Share Capital

- 5 lacs — If the words Hindustan, India, Bharat used in the name with or without bracket.
- 10 lacs — The minimum authorised capital required for the word enterprise, products, business and manufacturing in the name of the company.
- 50lacs — The Minimum Authorised Capital required if the words International, Global, Universal, Continental, Intercontinental, Asiatic, Asia used within the name with or without bracket.
- 1 crore — International, Global, Universal, Continental, Intercontinental, Asiatic, Asia as first word, and the word industry and udhyog anywhere in the name.
- 5 crore — The word corporation anywhere in the name.

Paidup Capital

- ☞ 1 Lac — Minimum size of capital of a Pvt. Ltd. Company (Section 3 (1) (iii) of Companies Act)
- ☞ 5 Lacs — Minimum size of capital of a Public Ltd. Company. (Section 3 (1) (iv) (b) of The Companies Act)
- ☞ 10 Lacs — From this level secretarial compliance certificate

- ☞ 5 crore — Minimum size of paid up capital for listing at Bombay Stock Exchange
 - ☞ 5 crore — Audit Committee requirement applies to all Public Limited Companies (Section 292A of The Companies Act)
 - ☞ 5 crore — Whole Time Director or a Managing Director becomes compulsory for all Public Limited Companies. (Section 269(1) of The Companies Act)
 - ☞ 10 crore — Minimum size of paid up capital for listing at National Stock Exchange.
- required (Section 383A (i) of The Companies Act)
- ☞ 50Lacs—Approval of central government for appointment of Sole selling agent (Section 294AA (3) of The Companies Act)
 - ☞ 1 crore — Approval of CG for contract and arrangement (Sec 297 (1) of The Companies Act.
 - ☞ 2 crore — Minimum size of paid up capital for registration of an NBFC company.
 - ☞ 2 crore — From this level a Full Time Company Secretary required (Section 383 A (i) of The Companies Act.)
 - ☞ 3 crore—Minimum size of capital for listing at stock exchanges where trading of securities is screen based.
 - ☞ 3 crore—The level of paid up capital from which the requirement of corporate governance starts (Clause 49 of listing agreement)

Corporates are growing well in India but still there are many bottlenecks that restrict the growth. These include, MAT tax, deemed dividend for closely held companies and double taxation on dividend. In total, all the rules, law and regulations should be so designed that the whole system should appear supportive to the free flow of lawful trade and commerce.

Paid up Capital and Free Reserves

- 50 lacs — From this level CARO becomes applicable to all Private Limited Companies.
- 50 lacs — from this level Internal Audit applicable to all companies

Turnover

- ☞ 40 lacs — The minimum level of business turnover from where the requirement of Tax Audit starts. (Section 44AB(a) of Income Tax Act)
- ☞ 500 lacs — The level of turnover from which CARO report is applicable to a Private Limited Company. (Para 2(vi) CARO)
- ☞ 500 lacs — The level of turnover from which internal audit is applicable. (Para 4 (vi) CARO)
- ☞ 50 crore — The level of turnover from which the accounting standards 3,17, 18,21,23,24, 25,27 & 28 of ICAI applies also to an unlisted company.
- ☞ 3000 crore—The combined likely turnover of two merging or amalgamating companies which attracts the provisions of section 5 of Competition Act, 2002.
- ☞ 12000 crore — the overall

turnover of a group after acquisition of a company which attracts the provisions of Section 5 of Competition Act, 2002.

Bank Loan

- ✍ 10 lacs — The minimum level of loan taken from bank from where CARO is applicable to a P. Ltd. Company. (Para 2(vi) CARO)
- ✍ 10 crore — The level of bank borrowing from which the accounting standards 3,17, 18 21,23, 24,25,27 & 28 of ICAI applies also to a unlisted company.

Net Worth

- 25 crore — The level of net worth required for any company for listing at Bombay Stock Exchange.

Book Assets

- ✍ 1000 crore — The likely size of the assets of two companies after the proposed merger, which attracts the section 5 of the Competition Act, 2002.
- ✍ 4000 crore — The likely size of the overall assets of the whole group after the acquisition of a new company, which attracts the provisions of section 5 of the Competition Act, 2002.

Shareholding

- ✘ Two per cent — The minimum level of shareholding of a director which requires disclosure of interest (Section 299(6) of The Companies Act)
- ✘ Five per cent — The level of shareholding achieved by a person which requires intimation to stock exchange under SEBI takeover rules
- ✘ 10 per cent — The level of shareholding in a company by person, which attracts the provi-

sion regarding deemed dividend. (Section 2(22)(e) of The Income Tax Act)

- ✘ 15 per cent — The level of shareholding achieved by a person or a group of persons in a listed company where the requirement of public offer applies under SEBI takeover rules.
- ✘ 15 per cent — The level of issue of Sweat Equity Shares by any Unlisted Public Ltd. Company beyond which the approval of Central Government is required.
- ✘ 20 per cent — The level of voting power/shareholding in the company on which a person is considered substantially interested in that company (under section 2 (32) of Income Tax Act.)
- ✘ 25 per cent — The level of minimum shareholding of the public in a listed Company, which is required to be maintained for continuous listing.
- ✘ 25 per cent — The buy back of equity shares shall not exceed from this level in a financial year (Section 77 A (c) proviso)

Media has twisted the definition of Corporate Size from net worth or profits to market capitalisation or turnover.

- ✘ 33.3 per cent — The level of minimum voting power in between the two corporate bodies controlled by the same individual or body corporate, which decides the status of two companies whether under the same management or not. (Section 370 (1B) (iii) of The Companies Act).
- ✘ 50 per cent+ — The level of holding of one company in another after, which the investor company becomes the holding

company and the level after which the holder of voting power in a company enjoys the ordinary control of the company.

- ✘ 60 per cent — The limit of investment/loan which a company can make in other company of its paid up capital and free reserves (Section 372 A of The Companies Act)
- ✘ 75 per cent+ — The level of shareholding where one can enjoy absolute majority control in the Company.
- ✘ 90 per cent+ — The level of shareholding where the minority shareholders lost their gravity to question the act of majority.

Number of shareholders/ members

- In a listed company having more than 1000 shareholders/ members a director to be inducted on the board representing small shareholders directors.

Transactions

- † Rs. 10000+: Attracts banking transaction tax @0.1 % per withdrawal as per budget proposal 2005.
- † Rs. 20000 — The maximum cash payment at a time for any expenditure (Section 40 A (3) of Income Tax Act)
- † Rs 20000 — Maximum cash for receipt and also payment of a loan (Section 269SS, 269TT of the Income Tax Act)
- † 100000 — Overdue money. Auditor's Comment required CARO 4 (iii) (d).
- † 500000 — Single transaction with related party under section 301—Auditor's comments required CARO 4 (v) (b).
- † If the transaction exceeds certain limit then the information of the transaction will be reached to the Income Tax

Department. (Section 285BA rule 114E) The transactions are;

- Acquisition of shares in the public/right issue of Rs. 1 lac or above,
- Purchase of mutual funds at a time for Rs. 2 lacs or above.
- Payment via credit card in aggregate for Rs. 2 lacs and above.
- Acquisition of bonds or debentures issued by a company or RBI bonds for Rs. 5 lacs or above at a time.
- Cash deposit in a bank account in aggregate in a financial year for Rs. 10 lacs or more.
- Purchase or sale of immovable property for Rs. 30 lacs and above.

Well, checks and formalities

are worldwide. Levels may be different but all these are for healthy growth and encouraging environment in the country. One must not remain small due to these checks and formalities. This will be injustice for him as well as for the country. In totality all the rules, law and regulations should be so designed that the whole system should appear supportive to the free flow of lawful trade and commerce in the country. The system should be proactive and immediately come into the action whenever the bottlenecks or hindrances appear. The system should foresee and visualize with a fine degree of improvisation that what wrong may happen. The system should not work after the incidents like primary and sec-

ondary share market frauds, NBFC frauds, or plantation company frauds or fixed deposit scheme frauds or multi-level marketing company frauds or cooperative banks bankruptcy etc. take place. No fraud emerges instantly. This takes time to develop and the concerned agencies or departments also, from time to time, receive the signals in this regard but apparently because of their inaction, the magnitude becomes higher. However, the measures like Surveillance System of Stock Exchanges, SEBI checks, set up of serious fraud investigation office (SIFO) RBI Monitoring, etc. are there to control such misdeeds but still more care is required to be taken especially keeping in view the cyber crimes. ■

The Institute of Chartered Accountants of India has become one of the select professional accounting bodies in the entire world to make Continuing Professional Education (CPE) mandatory for its members (with some exceptions). One of the major responsibilities of CPE Directorate in the CPE endeavour is to bring out Background Materials for various topics identified by the CPE Committee for conducting CPE Programmes by the POUs. The CPE Committee invites Expression of Interest from members of the Institute and other experts who are interested in developing CPE Background Materials on **ISO Certification Audit /Environmental Audit/Energy Audit**. The intending authors of the CPE Background materials are expected to have appropriate level practical experience in the relevant area alongwith the knowledge of Accounting Treatment in the books of Accounts and procedure for Auditing in the above areas.

The CPE background materials have to be prepared as self-learning booklets in the form of handbooks with proper mix of theory and practical case studies.

Apart from getting recognition, among their professional brethren, for their contribution in preparing the background materials, the authors of the accepted CPE Background materials will be:

1. Eligible for getting CPE Credit hours as per the Statement on CPE
2. Getting their names printed in the CPE Background materials
3. Honorarium and reimbursement of incidental expenses as per the prevailing policy of the Institute. (Which will depend upon the size, time and efforts to be required to prepare such background materials).

The intending authors are required to send a formal request letter with the following details, to Shri Surinder Pal, Secretary - CPEC, CPE Directorate, The Institute of Chartered Accountants of India, Post Box No.7100, Indraprastha Marg, New Delhi – 110 002. Sending proposals by email at spal@icai.org or cpeadmin@icai.org is preferred:

1. Brief profile of the author
2. Specific experience and expertise in the relevant topic for which they offer themselves to write the background materials which will enable the CPEC for allotting the preparation of background material for them
3. Proposed coverage of the CPE Background material (in about 2000 – 3000 words)
4. Sources of primary and secondary data based on which the Background material will be written
5. Time frame within which they can submit the background material.

It may be noted that mere submission of the Expression of Interest may not lead to the allotment of the particular background materials to a particular applicant. The Institute reserves the right to request any other expert (though they might not have offered their expression of interest in this regard) to prepare CPE Background materials. No communications will be entertained in this regard. Only selected authors will be individually communicated.