



# **ENSURING CORPORATE GOVERNANCE THE RIGHT WAY: BALANCING LAW WITH INTENT**

Case Study Presentation on Phoenix CFO Stalemate



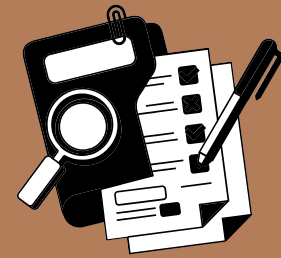
PRESENTED BY  
BARKHA VADHER & SHUBHANGI V



# FACTS OF THE CASE



Phoenix Financial Services Private Limited - a Joint Venture between Stellar Capital Investments & The Griffin Group.



Article 140 - Stellar Capital Investments (SCI) the right to submit 3 nominations for the position of Chief Financial Officer.



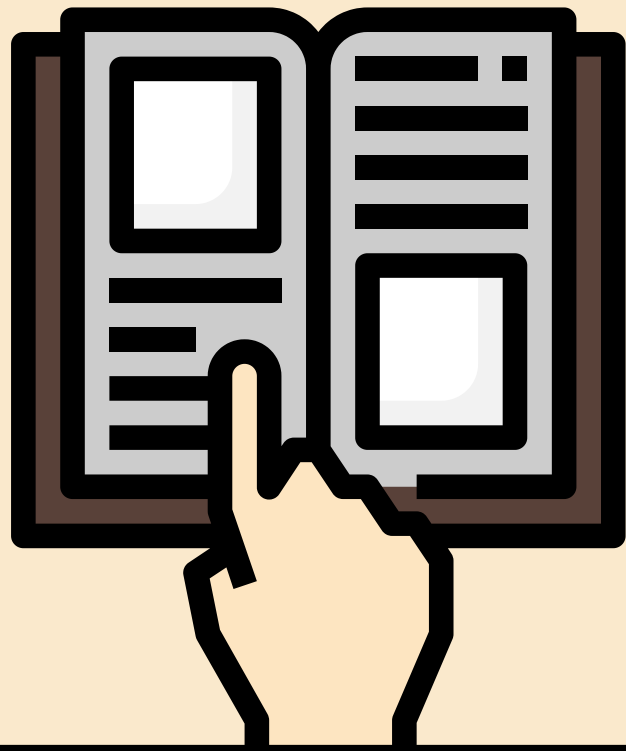
The Griffin Group - raise objections for first two nominations



SCI nominated 3 candidates - all were rejected by The Griffin Group

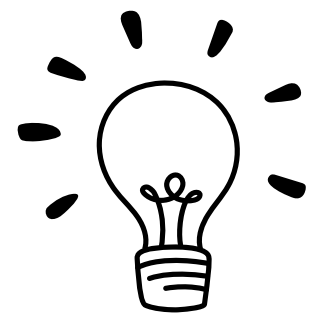


NCLT ordered appointment of 3<sup>rd</sup> Nominee within 60 days. The Griffin Group challenged the said order.





# KEY QUESTIONS ANALYSED



**01** Whether Shareholder intent in Articles of Association can prevail over statutory compliances.

**02** What Due Diligence & verification steps must be identified by a CS before recommending appointment as a “Whole-time KMP”.

**03** Strategic process to ensure procedural compliance, minimize potential litigation & maintain corporate governance standards.

**04** Role of CS in the present case from compliance officer to strategic mediator.

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# WHETHER AOA CAN OVERRIDE THE COMPANIES ACT?

**Section 6 of the Companies Act 2013** provides that in case of any inconsistency between the Companies Act and the AoA or the MoA, the Act prevails.

Therefore, Shareholders intent in the AoA cannot prevail over statutory compliance requirements.

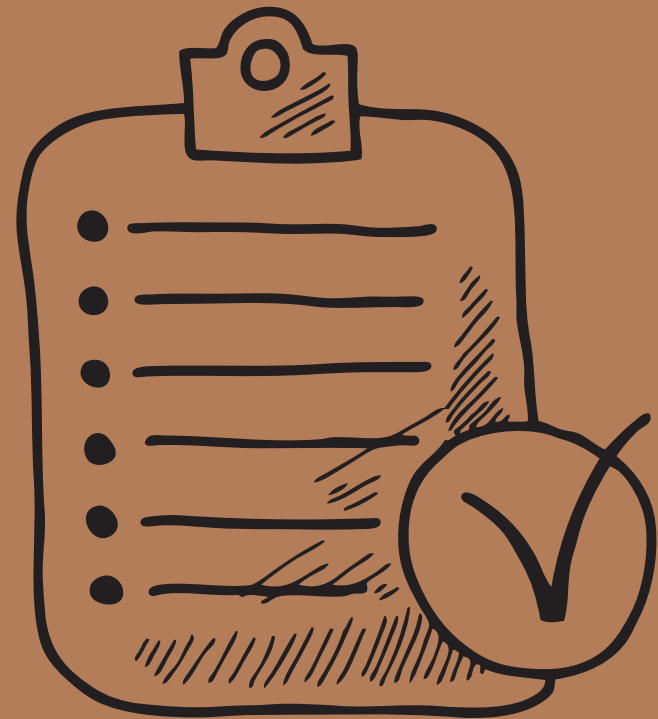
Judicial Precendents supporting Section 6 of the Companies Act :

**V.B. Rangaraj v. V.B. Gopalakrishnan (1992)**: The Supreme Court (SC) held that shareholder agreements or AOA provisions inconsistent with the Companies Act are unenforceable.

**Sai Prasad v. Dalmia (2018)** : **National Company Law Tribunal** has upheld that contractual rights in AoA cannot override statutory requirements for appointments, disclosures and governance.



# CONCLUSION

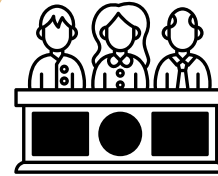


**The Companies Act holds supremacy  
- the MOA and AOA of a company  
must operate within its framework  
and not beyond it!**

2

# DUE DILIGENCE & VERIFICATION PRIOR TO KMP APPOINTMENT

Set up Independent Committee



Conduct Background Verifications



Conflict of Interest



Taking Declarations



3

# STRATEGIC APPROACH TO RESOLVE DEADLOCK

RELINQUISHMENT  
OF EMPLOYMENT  
POSITION OF MR.  
ANNANYA IN  
PRESENT  
COMPANY

WITHDRAWAL OF  
CASE BY THE  
GRIFFIN GROUP



# PROCEDURAL COMPLIANCES & AVOIDANCE OF LITIGATIONS

**MERIT BASED  
TRANSPARENT  
SELECTION  
PROCESS**



**ROBUST  
DOCUMENTATION**



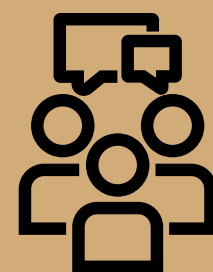
**TIMELY FILING  
WITH THE  
MINISTRY**



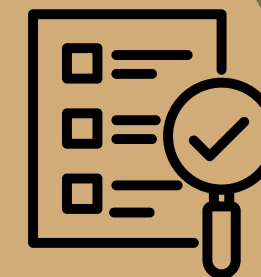
**COMPLIANCE  
WITH LAW IN  
LETTER &  
SPIRIT**



**NOMINATION  
COMMITTEE**

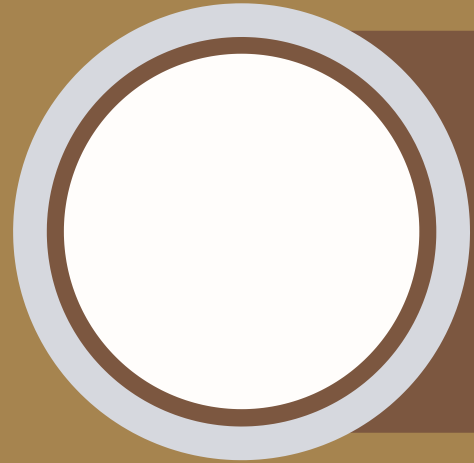


**INTRODUCE  
REGULAR  
COMPLIANCE  
AUDIT**

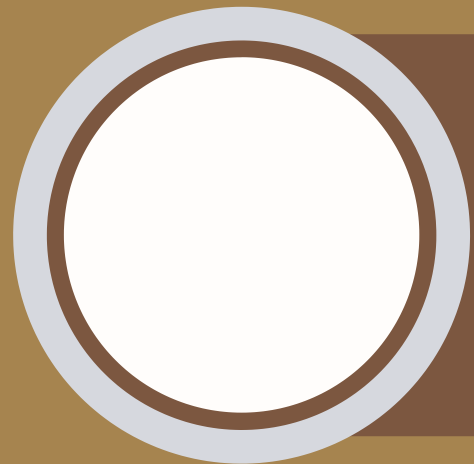




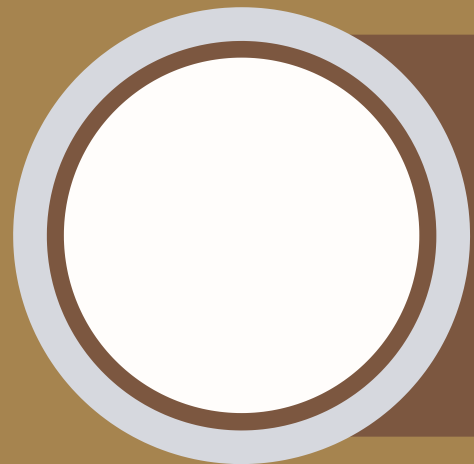
# CORPORATE GOVERNANCE



**INDEPENDENCE & OBJECTIVITY**



**TRANSPARENCY & ACCOUNTABILITY**



**ROBUST DOCUMENTATION**

# 4

# STRATEGIC MEDIATION BY A COMPANY SECRETARY



**Thank you!**



**S.C.SHARADA  
& ASSOCIATES**  
COMPANY SECRETARIES

# **VOLUNTARY KMP TRAP**



PRESENTED BY  
BARKHA VADHER & SHUBHANGI V

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**12<sup>th</sup> October 2025**

# FACTS OF THE CASE



**Witcher India Private Limited - a Subsidiary of a company incorporated outside India**



**Mr. Geralt Rivia - Director and Informally referred as the Company's "Chairman and CEO"**



**Inquiry u/s 206 of the Companies Act, 2013 was initiated by the Registrar**



**Statutory documents signed as CEO but no filing was done for the same**

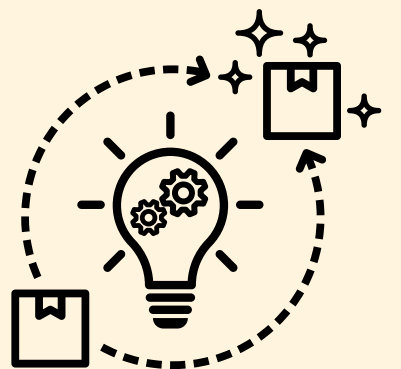


# KEY QUESTIONS ANALYSED

Addressing the regulatory concerns raised due to informal use of the title “CEO”

Can Internal usage of a designation like “CEO” transform a customary role into one with statutory significance

Immediate actions to be taken by the Board to ensure compliance



# ADDRESSING THE REGULATORY CONCERNS

**RATIFICATION  
OF THE  
PREVIOUS  
ACTS OF MR.  
RIVIA DONE  
IN THE  
CAPACITY OF  
A CEO**

**FORMAL  
APPOINTMENT OF  
MR. RIVIA AS THE  
CEO, IF THE  
BOARD  
APPROVES**

**TIMELY FILING  
OF FORM DIR -  
12**





# CONSEQUENCE OF INTERNAL USAGE OF THE TITLE “CEO”

**ROC BANGALORE**  
PASSED AN ORDER  
IN A SIMILAR CASE  
OF M/S LANDMOUS  
REALTY PRIVATE  
LIMITED

IN THE SAID ORDER,  
THE ROC HAS LEVIED  
**PENALTY** U/S 172 FOR  
NON-COMPLIANCE  
OF SECTION 170 (2)

## MAXIMS AND DOCTRINES APPLICABLE:

IGNORANTIA JURIS  
NON EXCUSAT

DOCTRINE OF  
HOLDING OUT

DOCTRINE OF  
ESTOPPEL



# ACTIONS TO BE TAKEN BY THE COMPANY

COMPLIANCE WITH  
SECTION 203 OF THE  
ACT

INTERNAL FRAMEWORK  
FOR ASSIGNING TITLES

LIAISON WITH INTERNAL AND  
EXTERNAL STAKEHOLDERS

*Thank You*