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The Companies Act, 2013 has provided various new definitions and new provisions which did not exist in the erstwhile Companies Act, 1956. Such new concepts have been introduced in view of the global corporate governance trends and to make the Companies accountable for their stakeholders.

**InSync** in this edition aims at explaining the concept of different provisions in an M&A transaction and the mood of the judiciary in Writ Petitions

**Wrongful Representations and Warranties,  
Beware !**

Representations and Warranties are an absolute necessity in a Merger and Acquisition ("M&A") Contract. Basically, these representations and warranties contain statements made by the seller as to the quality, condition, value or nature of the business/ entity that the buyer is acquiring from the seller. These representations and warranties are generally backed up by the seller's acknowledgement that the buyer is entering into the transaction in reliance of such provisions. Considering the importance of this provision in an M&A transaction, it should be drafted only after serious negotiations between the buyer and the seller.

**Legal Framework**

Although the terms Representation and Warranty are not defined in the Indian Contract Act, 1872, the judiciary has tried to differentiate between the two in the matter of *All India General Insurance Co v. S P Maheswari* where the Madras High Court stated that, "*Warranties are representations which are made the basis of the contract whereas a representation is not strictly speaking a part of the contract or of the essence of it, but rather something preliminary and in the nature of an inducement to it.*"

**Breach of Representation and Warranty**

**Representations depict the quality, condition, value or nature of the business/ entity**

**There is no general duty to disclose facts which are or might be equally within the means of knowledge of both parties**

**As per Section 19 of the Contract Act, the contract is voidable at the option of the party who was induced by misrepresentation**

**Promoters and sellers have to be very careful before making any representations and warranties**

As per Section 19 of the Indian Contract Act, 1872, the contract is voidable at the option of the party who was induced by misrepresentation. In such a condition, there are two remedies available, one being to elect to rescind the contract, or to seek enforcement of representation, and insist upon being placed in the same position as if the contract were performed. The the buyer can seek damages from the court in case of such misrepresentation, where in general, the courts have awarded damages which are merely restitutory in nature but in instances where the wrongful representation and warranty is linked to the performance of a contract, the court may award compensation as well relying upon Section 75 of the Contract Act which permits a party rightfully rescinding a contract to compensation for any damage which he has sustained through the non-fulfilment of the contract. Therefore, promoters and sellers have to be very careful before making any representations and warranties as they may be liable for compensation in addition to damages which are merely restitutory in nature.

**The Delhi HC has made it clear that sequential Petitions shall not be encouraged at any cost**

**An exemplary cost of Three Lacs has been imposed on the Petitioner**

**The Petitioner filed six different Writ Petitions based on similar grounds and facts.**

**There is no law under which a Writ Petition can suddenly be considered as non-existent or nullity**

### **Back to Back Writ Petitions may Invite a Hefty Penalty.**

The Hon'ble High Court of Delhi has held that back to back Writ Petitions revolving around the same grounds and facts will not only be dismissed, but will also be lamented with hefty costs.

The Delhi High Court has directed the Petitioner to deposit a cost of Rupees Three Lacs with the registry for the reasons given herein below.

### **Background**

In the matter of *S.N. Sahu Vs. Chairman, Rajya Sabha & Ors.*, the Petitioner had filed six different Writ Petitions under Article 226 of the Indian Constitution mainly pertaining to the secretariat of Rajya Sabha, which revolved around similar grounds and facts. Interestingly, in the sixth Writ Petition, the Petitioner had urged the Court to consider the earlier five Writ Petitions as non-existent and nullity. All the Writ Petitions were similar to each other with some obvious minor changes, but those

were not enough to convince the court that it shall be treated any differently.

### **Decision of the Court**

The Delhi high Court came down heavily on the Petitioner and dismissed the Writ Petition with an exemplary cost of Rupees Three Lacs. The court observed that since the Petitioner has enough resources to file multiple Writ Petitioner, it would not be a problem for him to pay such a cost. The Court further stated that such frivolous and sequential Writ Petitions shall be dealt sternly as these asrenothing but a hindrance in the speedy administrations of justice.

**For any clarification or delineation, feel free to contact us.**



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**AMC Law Firm, Advocates & Solicitors**  
B-30, LGF, Lajpat Nagar 3, New Delhi - 110024 India  
Phones: 91-11-41354354, 41078082  
Fax : 91-11-29841673  
E-mail: [info@amclawfirm.com](mailto:info@amclawfirm.com)

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