

PKMGLAW CHAMBERS

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MONTHLY LAW REPORT FOR DECEMBER, 2019

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REGULATORY UPDATES
(Notifications/Circulars)

Notification/Circular	Date	Subject
1. MINISTRY OF CORPORATE AFFAIRS General Circular No. 16/2019	28-11-2019	Extension of last date of filing of Form PAS-6 <p>1.This Ministry has received representations regarding extension of the last date of filing of Form PAS-6 under rule 9A (8) of the Companies (Prospectus and Allotment of Securities) Rules, 2014.</p> <p>2. The matter has been examined and it is stated that the time limit for filing Form PAS-6 without additional fees for the half-year ended on 30.09.2019 will be sixty days from the date of deployment of this form on the website of the Ministry.</p> <p>3. This issues with approval of the competent authority.</p>
2. MINISTRY OF CORPORATE AFFAIRS General Circular No. 15/2019	28-11-2019	Relaxation of additional fees and extension of last date in filing of forms MGT-7 (Annual Return) and AOC-4 (Financial Statement) under the Companies Act, 2013- UT of J&K and UT of Ladakh <p>1.In continuation to General Circular No.13/2019 dated 29.10.2019 and keeping in view of the requests received from various stakeholders stating that due to disturbances in internet services and the normal work was affected in the UT of J&K and UT of Ladakh and sought extension of time for filing of financial statements for the financial year ended</p>

		<p>31.03.2019.</p> <p>Therefore, it has been decided to extend the due date for filing of e-forms AOC-4, AOC-4 (CFS) AOC-4 XBRL and e-form MGT-7 up to 31.01.2020, for companies having jurisdiction in the UT of J&K and UT of Ladakh without levy of additional fee.</p> <p>2. This issues with the approval of the competent authority.</p>
<p>3. MINISTRY OF CORPORATE AFFAIRS General Circular No.14/2019</p>	<p>27.11.2019</p>	<p>Extension of the last date of filing of Form NFRA-2</p> <p>1. The Ministry of Corporate Affairs has received several representations regarding extension of the last date of filing of Form NFRA-2, which is required to be filed under rule 5 of the National Financial Reporting Authority Rules, 2018.</p> <p>2. The matter has been examined and it is stated that the time limit for filing Form NFRA-2 will be 90 days from the date of deployment of this form on the website of National Financial Reporting Authority (NFRA).</p> <p>3. This issues with the approval of Competent Authority.</p>
<p>4. MINISTRY OF CORPORATE AFFAIRS Vide Notification No. G.S.R. 859(E)</p>	<p>19.11.2019</p>	<p>In the notification of the Government of India in the Ministry of Corporate Affairs number G.S.R. 776(E), dated the 11th October, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), dated the 11th October,</p>

		2019, at page 2, in line 14, for “Defence Research and Development Organization (DRDO)”, read “Defence Research and Development Organization (DRDO), Department of Biotechnology (DBT)
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Companies Act, 2013 Case Studies

By Advocate P.K Mittal, +91-9811044365

✚ In the matter of Calcutta Rubber Factory Pvt. Ltd. Vs. ROC Company Appeal (AT) No. 177 of 2019

NCLAT observed that according to Section 248(1) of the Companies Act, 2013 where the Registrar has reasonable cause to believe that a company is not carrying on any business of operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of dormant company u/s 455 then the registrar shall send a notice to the company & all the directors of the company of his intention to remove the name of the company from the register of companies.

The NCLAT in the present case directed the ROC to restore the name of the Appellant no.1 –company on the ground that the company was carrying on business but was running into losses. Also, the company was having a lease hold plot allotted by HUDA and the appellant company undertakes to file the returns and financial statement after the period of 2012-2013.

✚ In the matter of Zasha Advertising Pvt. Ltd. Vs. Abhijit Roy MANU/DE/4124/2019

The High court of Delhi observed that: The change of name of a company shall never affect its rights or obligations, as in the present case, any rights or obligations, carried out by the Appellant in its previous name shall not affect its rights and obligations by merely changing its name and which shall pass on to the same company under the new name.

Insolvency and Bankruptcy Code, 2016 Case Studies by Advocate P.K. Mittal +91-9811044365

+ In the matter of Sesh Nath Singh and Anr. vs. Baidyabati Sheoraphuli Cooperative Bank Ltd. Company Appeal(AT) (Insolvency) no.672 of 2019

While computing the limitation period, in respect of section 7 application (for initiating insolvency proceedings) under the IBC, 2016, the NCLAT has excluded the time during which the financial creditor had proceeded against the corporate debtor under the SARFAESI Act, 2002, for the same relief.

+ In the matter of Asset Reconstruction Company (I) Limited (ARCIL) Vs. Mr. Koteswara Rao Karuchola & Ors. Company Appeal (AT) (Insolvency) No. 633 of 2018

NCLAT while setting aside the impugned order of NCLT, Hyderabad Bench, observed that: After the constitution of the 'Committee of Creditors', without its permission, the 'Resolution Professional' is not competent to entertain more applications after three months to include one or other person as 'Financial Creditor'.

+ In the matter of Anil Syal vs. Sanjeev Kapoor (nclat) company appeal (at) insolvency no. 961 of 2019

The Adjudicating Authority held that M/s Flywheel Logistics Pvt. Ltd. & M/s Flywheel Logistics Solutions Pvt. Ltd. are different corporate entities having different CIN numbers & registered addresses. Therefore, the demand notice issued against the Corporate Debtor is not a valid notice U/s 8 of the Code. The alleged demand notice relates to the dues of the other company. Thus, the service of the demand notice by Operational Creditor cannot be treated as valid and proper service and hence the appeal was allowed U/s 61 of the Code.

+ In the matter of Hardeep Singh Sawhney vs. Sawhney Builders Pvt. Ltd. (nclat) company appeal (at) insolvency no. 1147 of 2019

The Adjudicating Authority observed that to sustain an application U/s 7 of IBC, the applicant is to establish the existence of 'debt' which is due

from the Corporate Debtor. His existence of undisputed debt is 'Sine Qua Non' for triggering the CIRP. The Adjudicating Authority under IBC is not a 'court of law' and it does not decide money claim or 'suit'. The Adjudicating Authority dismissed the present appeal as the appellant failed to establish any 'Debt' recoverable from the Respondent Company and the occurrence of the default.

BY: PRADEEP K. MITTAL

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