

# **PKMG** LAW CHAMBERS

**ADVOCATES AND SOLICITORS**  
**MONTHLY LAW REPORT FOR August,2018**

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**KOMAL GARG**  
**B.COM,L.L.B(3<sup>rd</sup> YEAR)**

## REGULATORY UPDATES (Notifications/Circulars)

Notification&Circular No.	Date of issue	Subject
<p>1. Ministry of Corporate Affairs</p> <p>Notification- S.O. 3921(E).</p>	07/08/2018	<p><b><u>Enforcement of Section 10 of the Companies(Amendment) Act, 2017</u></b></p> <p>In exercise of the powers conferred by sub-section (2) of section 1 of the Companies (Amendment) Act, 2017, The Central Government hereby appoints the 7th day of August, 2018 as the date on which the provisions of section 10 of the said Act shall come into force.</p> <p><b>Notes:</b> <b>Section10-</b> Substitution of new section for section 42 of Companies Act, 2013 i.e., Issue of shares on Private Placement basis.</p>
<p>2. MINISTRY OF CORPORATE AFFAIRS</p> <p>NOTIFICATION – G.S.R 752(E)</p>	07/08/2018	<p><b><u>Amendment in The Companies (Prospectus and Allotment of Securities) Rules, 2014,</u></b></p> <p>In exercise of the powers conferred by section 42, read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013, The Central Government hereby makes the following rules further to amend the Companies (Prospectus and Allotment of Securities) Rules, 2014, namely:-</p> <p>1. (1) These rules may be called the Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2018. (2) They shall come into force from the date of their publication in the Official Gazette.</p> <p>2. In the Companies (Prospectus and Allotment of Securities) Rules, 2014 (hereinafter referred to as the principal rules), for rule 14, the following rule shall be substituted, namely:- <b>“14. Private placement.-</b> (1) For the purposes of sub-section (2) and sub-section (3) of section 42, a company shall not make an offer or invitation to subscribe to securities through private placement unless the proposal has been previously approved by the shareholders of the company, by a special resolution for each of the offers or</p>

	<p>invitations:</p> <p>Provided that in the explanatory statement annexed to the notice for shareholders' approval, the following disclosure shall be made:-</p> <p>(a) particulars of the offer including date of passing of Board resolution;</p> <p>(b) kinds of securities offered and the price at which security is being offered;</p> <p>(c) basis or justification for the price (including premium, if any) at which the offer or invitation is being made;</p> <p>(d) name and address of valuer who performed valuation;</p> <p>(e) amount which the company intends to raise by way of such securities;</p> <p>(f) material terms of raising such securities, proposed time schedule, purposes or objects of offer, contribution being made by the promoters or directors either as part of the offer or separately in furtherance of objects; principle terms of assets charged as securities:</p> <p>Provided further that this sub-rule shall not apply in case of offer or invitation for non-convertible debentures, where the proposed amount to be raised through such offer or invitation does not exceed the limit as specified in clause (c) of subsection (1) of section 180 and in such cases relevant Board resolution under clause (c) of sub-section (3) of section 179 would be adequate:</p> <p>Provided also that in case of offer or invitation for non-convertible debentures, where the proposed amount to be raised through such offer or invitation exceeds the limit as specified in clause (c) of sub-section (1) of section 180, it shall be sufficient if the company passes a previous special resolution only once in a year for all the offers or invitations for such debentures during the year.</p> <p>(2) For the purpose of sub-section (2) of section 42, an offer or invitation to subscribe securities under private placement shall not be made to persons more than two hundred in the aggregate in a financial year:</p> <p>Provided that any offer or invitation made to</p>
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qualified institutional buyers, or to employees of the company under a scheme of employees stock option as per provisions of clause (b) of sub-section (1) of section 62 shall not be considered while calculating the limit of two hundred persons.

Explanation.- For the purposes of this sub-rule, it is hereby clarified that the restrictions aforesaid would be reckoned individually for each kind of security that is equity share, preference share or debenture.

(3) A private placement offer cum application letter shall be in the form of an application in Form PAS-4 serially numbered and addressed specifically to the person to whom the offer is made and shall be sent to him, either in writing or in electronic mode, within thirty days of recording the name of such person pursuant to sub-section (3) of section 42:

Provided that no person other than the person so addressed in the private placement offer cum application letter shall be allowed to apply through such application form and any application not conforming to this condition shall be treated as invalid.

(4) The company shall maintain a complete record of private placement offers in Form **PAS-5**.

(5) The payment to be made for subscription to securities shall be made from the bank account of the person subscribing to such securities and the company shall keep the record of the bank account from where such payment for subscription has been received:

Provided that monies payable on subscription to securities to be held by joint holders shall be paid from the bank account of the person whose name appears first in the application:

Provided further that the provisions of this sub-rule shall not apply in case of issue of shares for consideration other than cash.

(6) A return of allotment of securities under section 42 shall be filed with the Registrar within fifteen days of allotment in Form **PAS-3** and with the fee as provided in the Companies (Registration Offices and Fees)

		<p>Rules, 2014 along with a complete list of all the allottees containing-</p> <p>(i) the full name, address, Permanent Account Number and E-mail ID of such security holder; (ii) the class of security held;</p> <p>(iii) the date of allotment of security ;</p> <p>(iv) the number of securities held, nominal value and amount paid on such securities; and particulars of consideration received if the securities were issued for consideration other than cash.</p> <p>(7) The provisions of sub-rule (2) shall not be applicable to -</p> <p>(a) non-banking financial companies which are registered with the Reserve Bank of India under the Reserve Bank of India Act, 1934 (2 of 1934); and</p> <p>(b) housing finance companies which are registered with the National Housing Bank under the National Housing Bank Act, 1987,</p> <p>if they are complying with regulations made by the Reserve Bank of India or the National Housing Bank in respect of offer or invitation to be issued on private placement basis:</p> <p>Provided that such companies shall comply with sub-rule (2) in case the Reserve Bank of India or the National Housing Banks have not specified similar regulations.</p> <p>(8) A company shall issue private placement offer cum application letter only after the relevant special resolution or Board resolution has been filed in the Registry:</p> <p>Provided that private companies shall file with the Registry copy of the Board resolution or special resolution with Respect to approval under clause (c) of sub-section (3) of section 179.</p> <p>3. In the principal rules, in the Annexure, -</p> <p>(i) for "Form No. PAS-4", the following Form shall be substituted.</p>
<p><b>3.MINISTRY OF CORPORATE AFFAIRS</b></p> <p><b>NOTIFICATION – G.S.R. 797(E)</b></p>	<p><b>21/07/2018</b></p>	<p><b><u>Amendment in The Companies (Registration Offices and Fees) Rules, 2014</u></b></p> <p>In exercise of the powers conferred by sections 396,398,399, 403 and 404 read</p>

		<p>with sub-sections (1) and (2) of section 469 of the Companies Act, 2013, The Central Government hereby makes the following rules further to amend the Companies (Registration Offices and Fees) Rules, 2014, namely:—</p> <p>1. (1) These rules may be called the Companies (Registration Offices and Fees) <b>Fourth</b> Amendment Rules, 2018. (2) They shall come into force from the date of their publication in the Official Gazette.</p> <p>2. In the Companies (Registration Offices and Fees) Rules, 2014, in the Annexure, under the head VII, for note below Fee for filing e-form DIR-3 KYC, the following note shall be substituted, namely:- “for the current financial (2018-2019), no fee shall be chargeable till the 15th September, 2018 and fee of Rs.5000 shall be payable on or after the 16th September, 2018”.</p>
<p><b>4. MINISTRY OF CORPORATE AFFAIRS</b> <b>NOTIFICATION- G.S.R. 798(E)</b></p>	<p>21/08/2018</p>	<p><b><u>Amendment in the Companies (Appointment and Qualification of Directors) Rules, 2014</u></b></p> <p>In exercise of the powers conferred under second proviso to sub-section (1), sub-section (4), sub-section (6) of section 149, sub-section (3) and (4) of section 150, section 151, sub-section (5) of section 152, section 153, section 154, section 157, section 160, sub-section (1) of section 168 of and section 170 read with section 469 of the Companies Act, 2013 , The Central Government hereby makes the following rules further to amend the Companies (Appointment and Qualification of Directors) Rules, 2014, namely: -</p> <p>1. (1) These rules may be called the Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2018. (2) They shall come into force from the date of their publication in the Official Gazette.</p> <p>2. In the Companies (Appointment and Qualification of Directors) Rules, 2014, (i) In the proviso to rule 12A, for the words and numbers “DIR-3 KYC on or before 31st August, 2018, the words and numbers “DIR-3 KYC on or before 15th September, 2018 ” shall be substituted.</p>

		(ii) In the Annexure, for Form No.DIR-3 KYC, the following Form shall be substituted.
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**Companies Act, 2013 Case Studies**  
**By Advocate P.K Mittal, +91-9811044365**

- High Court held that the Company Law Board is not empowered to go into the merits of the registration of charge created by a company, and declare it null and void. The petitioner is open to raise the challenge relating to the documents, the enforceability, execution of the entitlement or defence in respect of bar of limitation which lie before an appropriate forum available in law.  
**Pearl engineering polymers ltd. MANU/MH/0405/2018**
- High court held that if the Company is unable to pay its dues or to secure or compound for it to the reasonable satisfaction of the petitioner (employee) u/s 434(1)(a) of Companies Act,2013, the Company would be deemed to be unable to pay its debts and liable to wound up. **Ravindra Anand Kamat MANU/MH/2357/2018**
- High Court Held that if there is a disputes in respect of payment of dues, however small that sum may be, a petition for winding up is not maintainable and the necessary forum for determination of such a dispute existing between parties is a civil court. **Rim and Accessories (P) Ltd MANU/TN/1028/1990**
- NCLAT held that the appellant cannot file the appeal over the rejection of application which was filed by someone else. He cannot maintain appeal from order of rejection of an application to which he was not party, and nor the company petition in which it was filed.  
**Tulsi Vithalbai Patel V. Hotel Oasis (Surat) (P) Ltd. MANU/NL/0086/2018**

## **Insolvency and Bankruptcy Code, 2016 Judgments By Advocate P.K. Mittal, +91-9811044365**

- NCLT dismisses petition for initiation of Corporate Insolvency Resolution Process filed u/s 7 of IBC by financial Creditors against the Corporate Debtor. It Held that the petition is mere filed for defrauding the Creditors and get the moratorium u/s 14 of IBC. The intent of insolvency resolution process cannot be to interfere in cases where there are financial irregularities, illegalities or indications of a financial Fraud. **LSI-229-NCLT-2018(ALLD)**
  
- NCLT admits insolvency petition u/s 9 of IBC for admission of debt by Corporate Debtor. It held that where Corporate Debtor admits the claim and Service of Notice by Operational Creditor. The Petition has to be admitted under the Act and moratorium has to be initiated. **LSI-224-NCLT-2018(KOL)**
  
- NCLAT held that 'Dispute' has to be in between the Corporate Debtor and the Operational Creditor and inter se dispute between two groups of shareholder of the corporate debtor does not constitute a dispute in reference to the operational creditors under Insolvency and bankruptcy code, 2016. **Jai lakshmi solvents (P.) Ltd and Another MANU/NL/0092/2018**
  
- NCLT dismissed application filed by the suspended director of the Corporate Debtor seeking that the Committee of Creditors' decision of disallowing him from participation in Committee of Creditors meetings be set aside. It draws out a difference between 'Participants' and 'Members' under the code pertaining to the Committee of Creditors meetings. And also held that these kind of application shall not be entertained by the tribunal, as it is difficult for the Resolution professional as well as Committee of Creditors to complete the process within time limits. **LSI-248-NCLT-2018(MUM)**
  
- NCLT admits insolvency petition u/s 9 of IBC,2016 filed by operational creditor and reject the contention of corporate debtor that the petition is non maintainable because claim is time barred. It held that provisions of Limitation Act are not applicable for institution of corporate insolvency resolution process. **LSI-281-NCLT-2018(HYD)**



**Income Tax Circulars, Notifications and Press Release  
By CA Manoj Kumar Mittal, +91-9810764620**

**CBDT Issues Guidelines For Manual Selection Of Returns For Complete Scrutiny In FY 2018-19**

The CBDT has vide Instruction No. 04 of 2018 dated 20th August 2018 issued guidelines for manual selection of returns for complete scrutiny during the financial year 2018-19.

**CBDT Instruction Reg Conduct Of E-Assessment Proceedings During FY 2018-19**

The CBDT has vide Instruction No. 03 dated 20th August 2018 issued instructions regarding the conduct of assessment proceedings through 'E-Proceeding' facility during FY 2018-19

**CBDT Circular Clarifies Law On Immunity U/s 270AA From Levy Of Penalty**

The CBDT has issued Circular No. 5/2018 dated 16th August 2018 by which it has issued an important clarification on the immunity provided u/s 270AA of the Income-tax Act, 1961

**CBDT Directive Reg Acceptance Of Paper Returns For AYs Prior To AY 2018-19**

The Additional Director General (Systems) has issued an important directive dated 14th August 2018 with regard to the acceptance of paper returns by ASK Centers for AYs prior to AY 2018-19

**CBDT Circular Explains Law On Computation Of S. 10A Deduction**

The CBDT has issued Circular No. 4/2018 dated 14th August 2018 in which the law relating to computation of admissible deduction u/s 10A of the Income-tax Act, 1961 has been explained in the light of the judgement of the Supreme Court in CIT vs. HCL Technologies Ltd (2018) 404 ITR 719

**CBDT issues clarification regarding amendment in form 3CD**

CBDT vide circular no. 6/2018 under section 119 of the Income Tax Act, dated 17.08.2018 clarified that reporting under the proposed clause 30C and proposed clause 44 of the Tax Audit Report shall be kept in abeyance till 31st March, 2019. Therefore, for Tax Audit Reports to be furnished on

or after 20th August, 2018 but before 1 st April, 2019, the tax auditors will not be required to furnish details called for under the said clause 30C and clause 44 of the Tax Audit Report.

**Amendment to para 10 of the Circular No. 3 of 2018 dated 11.07.2018-reg monetary ceiling in filling appeal before itat, high court and supreme court**

**CBDT vide notification no** F No 279/Misc. 142/2007-ITJ (Pt) dated 20.08.2018 has stated that

Para 10 of the said Circular provides that adverse judgments relating to the issues enumerated in the said para should be contested on merits notwithstanding that the tax effect entailed is less than the monetary limits specified in para 3 thereof or there is no tax effect. Para 10 of the Circular No.3 of 2018 dated 11.07.2018 is hereby amended as under:

10. Adverse judgments relating to the following issues should be contested on merits notwithstanding that the tax effect entailed is less than the monetary limits specified in para 3 above or there is no tax effect:

- (a) Where the Constitutional validity of the provisions of an Act or Rule is under challenge, or
- (b) Where Board's order, Notification, Instruction or Circular has been held to be illegal or ultra vires, or
- (c) Where Revenue Audit objection in the case has been accepted by the Department, or
- (d) Where addition relates to undisclosed foreign income/ undisclosed foreign assets (including financial assets)/ undisclosed foreign bank account.
- (e) Where addition is based on information received from external sources in the nature of law enforcement agencies such as CBI! ED! DRI! SFIO! Directorate General of GST Intelligence (DGGI).
- (f) Cases where prosecution has been filed by the Department and is pending in the Court. »

**CBDT notifies rules relating to determination of FMV of inventory on conversion of it into capital assets**

The CBDT vide Notification No. 42/2018/F. No. 370142/05/2018-TPL dated 30.08.2018 notifies rules relating to determination of FMV of inventory on conversion of it into capital assets.

### **DOMESTIC CASE LAWS**

#### **Sonia Gandhi vs ACIT, 97 taxmann.com 150 (Delhi)**

Where Congress Party advanced money to National Herald to write off accumulated debts and recommence newspaper and non-profit company Young India was incorporated to whom said loan was assigned and subsequently Gandhis were allotted shares of Young India, but in Income-tax returns, assessee had nowhere recorded primary fact in respect of taxing event i.e. acquisition of shares of non-profit company Young India, mere scrutiny assessment would not bar reassessment.

#### **Meenu Goel vs ITO, 94 taxmann.com 158 (Delhi - Trib.)**

LTCG claimed by assessee on sale of shares cannot be held to be cash credits merely on basis of report of investigation wing while rejecting documentary evidences to prove genuineness of transaction.

#### **ITO vs Ram Kishan Gosh, 33 taxmann.com 145 (Kolkata - Trib.)**

Merely because shares purchased by assessee were transferred to his demat account on a later date, date of transfer to demat account could not be taken as date of purchase.

#### **V. R. Global Energy (P.) Ltd vs ITO, 96 taxmann.com 647 (Madras)**

Where assessee allotted shares to a company in settlement of pre-existing liability of assessee to said company, since no cash was involved in transaction of said allotment of shares, conversion of these liabilities into share capital and share premium could not be treated as unexplained cash credits under section 68

#### **PCIT vs Bank Note Paper Mill India (P.) Ltd, 95 taxmann.com 158 (Karnataka)**

Interest income earned by assessee company on bank deposits made out of share capital prior to commencement of business operations was not liable to be taxed as same was eligible for deduction against public issue expenses incurred by company.

### **INTERNATIONAL TAXATION**

#### **GEA Refrigeration Technologies GmbH, AAR, 89 taxmann.com 220 (AAR - New Delhi)**

Where applicant, a German company, entered into share purchase agreement to acquire another German company namely Bock GmbH which in turn was holding 100 per cent shares of an Indian company, since value of assets of Indian company in total assets of Bock GmbH ranges between 5.23 per cent to 5.57 per cent of value of Bock GmbH, which is against requirement of 50 per cent as mentioned in Explanation 6 to section 9(1)(i) income derived by shareholders from sale of shares of Bock GmbH would not be chargeable to tax in India.

**Kaizen Global Services India (P.) Ltd. ,97 taxmann.com 48 (Mumbai - Trib.)**

Where revenue sharing between assessee and its US AE, on basis of same agreement, had been accepted for preceding years, for purpose of allowing claim of loss, same was to be accepted and matter remanded for readjudication.

**DIT vs Vanenberg Facilities BV, 82 taxmann.com 433 (Andhra Pradesh)**

Where, a Dutch company, sold shares of Indian company to a Singapore based company, as assessee-company did not sell immovable property or any rights in immovable property in which shareholders enjoyed ownership, article 13(1) was not applicable

IT/ILT: Where last date of payment of sale consideration was extended by Singaporean company and assessee company and Singaporean company undertook to pay interest at 7 per cent per annum on sale consideration, payment of said interest did not partake of nature of penalty charges as it was not penal in character, and therefore, Article 11(1) of DTAA between India and Singapore applied on all fours, and interest stood exempted from taxation in India under DTAA

**ITO vs Satish Behari Lal Raheja, 37 taxmann.com 296 (Mumbai - Trib.)**

Mutual fund units could not be considered as shares of companies, therefore, provisions of article 13(6) of Indo-Swiss Treaty were applicable in case of mutual fund units as per which capital gain could not be taxed in India.

**DCIT vs D. B. International (Asia) Ltd., 96 taxmann.com 75 (Mumbai - Trib.)**

Article 13(4) of DTAA between India and Singapore is not an exemption provision but it speaks of taxability of particular income in a particular State by virtue of residence of assessee and provisions of article 24 of

India Singapore Tax Treaty does not have much relevance insofar as it relates to applicability of article 13(4) to income derived from capital gain.

### **TRANSFER PRICING**

#### **Topcon Singapore Positioning (P.) Ltd vs DDIT, 96 taxmann.com 603 (Delhi - Trib.),,**

It is not open to TPO to go beyond role of determining ALP and intrude in exclusive domain of Assessing Officer to determine income taxable in hands of assessee.

#### **Shilpa Shetty vs ACIT, 96 taxmann.com 443 (Mumbai - Trib.)**

Where pre-requisite of a prior agreement between a non-AE with AE of an assessee was not fulfilled, transaction between assessee and company to which it provided brand ambassadorship services could not have been regarded as an 'International transaction'.

#### **Exxon Mobil Lubricants (P.) Ltd. vs ACIT, 97 taxmann.com 43 (Delhi - Trib.)**

TPO is required to determine ALP of international transaction unconcerned with fact if any benefit accrued to assessee.

#### **Sony Mobile Communications (India) (P.) Ltd vs ADIT, 96 taxmann.com 312 (Delhi - Trib.)**

Where assessee, a subsidiary of 'Sony Ericsson', engaged in business of importing and selling mobile phones manufactured by AE in domestic market, incurred certain AMP expenses for increasing its sale volume in India and not for brand building of AE, no ALP adjustment could be made in respect of expenses so incurred

#### **PCIT vs Andrew Telecommunications (P.) Ltd., 96 taxmann.com 613 (Bombay)**

Where T.P. proceedings were started afresh on remand by Tribunal, non-issuance of draft assessment order would vitiate final assessment order

## COMPLIANCE CALENDER DURING THE MONTH OF SEPTEMBER 2018

S.NO	Last Date	Act	Application Form	Particulars
1	7th September 2018	Income Tax	Form No. 27C (TCS)	Monthly filing of forms as received in August 2018
2	7th September 2018	Income Tax	Challan No. ITNS-281	Monthly payment of TDS/TCS deducted/collected in August 2018
3	10th September 2018	GST	GSTR -1	Monthly Return of Outward Suppliers for August 2018 (Annual turnover exceeding 1.5 Cr.)
4	14th September 2018	Income Tax	Form 16 B	Monthly issue of TDS Certificate - Section 194-IA for July 2018
5	14th September 2018	Income Tax	Form 16 C	Monthly issue of TDS Certificate - Section 194-IB for July 2018
6	15th September 2018	Companies Act	DIR-3 KYC	Annually filing of DIR-3 KYC by directors having DIN March 2018
7	15th September 2018	Income Tax	Challan No. 280	Quarterly payment of Advance Income Tax by All Assessess(45%) (except 44AD cases)
8	15th September 2018	Providend Fund	Electronic Challan cum Return (ECR)	Monthly E-Payment for PF for August 2018
9	15th September 2018	ESI	ESI Challan	Monthly payment of ESI for August 2018 (Applicable for Salary upto Rs. 21,000 instead of 15,000 earlier)
10	20th September 2018	GST	GSTR - 3B	Monthly payment of GST for August 2018
11	20th September 2018	GST	GSTR - 5	Monthly return for Nonresident for August 2018
12	20th September 2018	GST	GSTR - 5A	Monthly return for OIDAR services to unregistered recipients for August 2018
13	30th September 2018	Income Tax	ITR	Annually filing of I.T. Return by Companies & a person whose accounts are required to be audited
14	30th September 2018	Income Tax	Form 26QB	Monthly filing challan-cum-statement for TDS - Section 194-IA for August 2018
15	30th September 2018	Income Tax	Form 26QC	Monthly filing challan-cum-statement for TDS Section 194-IB for August 2018
16	30th September 2018	Income Tax	Form 3CD	Annually Tax Audit (U/s 44AB) March 2018
17	30th September 2018	Companies Act	Form FC-3	Filing of Form FC-3 (Annual accounts and list of places of business in India) with ROC for FY 2017-18 by Liaison/Branch/Project office in India

# OUR PUBLICATIONS

Our Article on the topic “**SHOW CAUSE NOTICE- EXAMINATION AND CROSS EXAMINATION OF WITNESSES WHOSE STATEMENT RELIED UPON BY DEPARTMENT AND BY PARTY (PART II)**” has been published in the journal ‘**GST PROFESSIONALS’ VOLUME 4 (ISSUE 2),AUGUST 2018.**

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**BY: PRADEEP K. MITTAL**

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