

PKMG LAW CHAMBERS

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MONTHLY LAW REPORT FOR DECEMBER, 2018

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REGULATORY UPDATES (Notifications/Circulars)

Notification&Circular No.	Date of issue	Subject
<p>1. MINISTRY OF CORPORATE AFFAIRS</p> <p>NOTIFICATION –G.S.R.1111(E).</p>	<p>13.11.2018</p>	<p><u>Enforcement of the National Financial Reporting Authority Rules, 2018.</u></p> <p>In exercise of the powers conferred under sub-sections (2) and (4) of section 132, sub-section (1) of section 139 and sub-section (1) of section 469 of the Companies Act, 2013, the Central Government hereby makes the National Financial Reporting Authority Rules, 2018 .</p> <p><u>Key highlights of the notification is given below:</u></p> <p>➤ Classes of companies and bodies corporate governed by the Authority.</p> <p>(1) The Authority shall have power to monitor and enforce compliance with accounting standards and auditing standards, oversee the quality of service under sub-section (2) of section 132 or undertake investigation under sub-section (4) of such section of the auditors of the following class of companies and bodies corporate, namely:-</p> <p>(a) companies whose securities are listed on any stock exchange in India or outside India;</p> <p>(b) unlisted public companies having paid-up capital of not less than rupees</p>

five hundred crores or having annual turnover of not less than rupees one thousand crores or having, in aggregate, outstanding loans, debentures and deposits of not less than rupees five hundred crores as on the 31st March of immediately preceding financial year;

(c) insurance companies, banking companies, companies engaged in the generation or supply of electricity, companies governed by any special Act for the time being in force or bodies corporate incorporated by an Act in accordance with clauses (b), (c), (d), (e) and (f) of sub-section (4) of section 1 of the Act;

(d) any body corporate or company or person, or any class of bodies corporate or companies or persons, on a reference made to the Authority by the Central Government in public interest; and

(e) a body corporate incorporated or registered outside India, which is a subsidiary or associate company of any company or body corporate incorporated or registered in India as referred to in clauses (a) to (d), if the income or networth of such subsidiary or associate company exceeds twenty percent of the consolidated income or consolidated networth of such company or the body corporate, as the case may be, referred to in clauses (a) to (d).

(2) Every existing body corporate other than a company governed by these rules, shall inform the Authority within thirty days of the commencement of these rules, in Form NFRA-1, the particulars of the auditor

as on the date of commencement of these rules.

(3) Every body corporate, other than a company as defined in clause (20) of section 2, formed in India and governed under this rule shall, within fifteen days of appointment of an auditor under sub-section (1) of section 139, inform the Authority in Form NFRA-1, the particulars of the auditor appointed by such body corporate:

Provided that a body corporate governed under clause (e) of sub-rule (1) shall provide details of appointment of its auditor in Form NFRA-1.

(4) A company or a body corporate other than a company governed under this rule shall continue to be governed by the Authority for a period of three years after it ceases to be listed or its paid-up capital or turnover or aggregate of loans, debentures and deposits falls below the limit stated therein.

Functions and duties of the Authority. (1) The Authority shall protect the public interest and the interests of investors, creditors and others associated with the companies or bodies corporate governed under rule 3 by establishing high quality standards of accounting and auditing and exercising effective oversight of accounting functions performed by the companies and bodies corporate and auditing functions performed by auditors.

(2) In particular, and without prejudice to the generality of the foregoing, the

		<p>Authority shall:_</p> <ul style="list-style-type: none">(a) maintain details of particulars of auditors appointed in the companies and bodies corporate specified in rule 3;(b) recommend accounting standards and auditing standards for approval by the Central Government;(c) monitor and enforce compliance with accounting standards and auditing standards;(d) oversee the quality of service of the professions associated with ensuring compliance with such standards and suggest measures for improvement in the quality of service;(e) promote awareness in relation to the compliance of accounting standards and auditing standards;(f) co-operate with national and international organisations of independent audit regulators in establishing and overseeing adherence to accounting standards and auditing standards; and(g) perform such other functions and duties as may be necessary or incidental to the aforesaid functions and duties. <p>(3) The Central Government may, by notification, and subject to such conditions, limitations and restrictions as may be specified therein delegate any of its powers or functions under the Act, other than the power to make rules, to the Authority.</p> <p>5. Annual return. Every auditor referred to in rule 3 shall file a return with the Authority on or before 30th April every year in such form as may be specified by the Central Government.</p>
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<p>2.MINISTRY OF CORPORATE AFFAIRS</p> <p>NOTIFICATION – G.S.R1108(E)</p>	<p>13.11.2018</p>	<p>Amendment in the Companies (Registered Valuers and Valuation) Rules, 2017</p> <p>In exercise of the powers conferred by section 247 read with section 469 of the Companies Act, 2013 ,the Central Government hereby makes the following rules further to amend the Companies (Registered Valuers and Valuation) Rules, 2017, namely:-</p> <p>1. (1) These rules may be called the Companies (Registered Valuers and Valuation) Fourth Amendment Rules, 2018.</p> <p>(2) They shall come into force on the date of their publication in the Official Gazette.</p>

Companies Act, 2013 Case Studies
By Advocate P.K Mittal, +91-9811044365

- High Court reject petition filed for seeking allotment of shares in favour of shareholders of the Defendent Company to be declared as null and void due to illegal transfer of shares which causes dilution of shareholding of plaintiff. It held that High Court has no jurisdiction to try the petition due to the bar contained u/s 430 and 434(1)(c) of the Companies Act, 2013, the NCLT has been vested with powers to adjudicate such issues.**LSI-495-HC-2018(DEL)**

- NCLAT dismiss appeal filed u/s 59 and 62 of the Companies Act and upheld NCLT order, in which the petitioner claimed that deposits made by him was in the nature of Loan which was converted into equity shares by the Company. It held that the claim of petitioner shall be considered as Loan and declared the allotment of shares null and void. It further held that the procedure for allotment of share was also not duly complied by the company. **Vestal educational services pvt. Ltd v. Lanka Venkata Naga Murlidhar and ors. MANU/NL/0290/2018**

- High Court held that the aggrieved persons can invoke sec.633(2) of Companies Act, 1956 even after the initiation of criminal proceedings by the Complainant against him . It held that Sec. 633 laid down the Power of Court to grant relief to such officer of Companies who are charged in respect of any negligence, default, breach of trust but has acted honestly. **Visram Financial Service (P.) Ltd. Vs. V Rajendran & Ors. (2018) 147 CLA 211(MAD.)**

- NCLAT dismiss the appeal and upheld NCLT order for refusing to pass interim order in a petition filed u/s 241 and 242 of the Companies Act, 2013. It held that if the affairs of the company is managed in compliance of the High Court order, The Tribunal cannot grant interim relief to the Company in relation to assets and books of accounts, the same would lead to conflict of order. **Deepak Beri & Ors. Vs. D.B. Engineering P. Ltd. & Ors. MANU/NL/0267/2018**

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

- NCLAT dismissed appeal filed by the shareholders of Corporate Debtor u/s 9 of IBC. It held that appellant has not questioned the fact that the debt is being payable to operational creditor, mere ground of goods being defective and of inferior quality supplied by the Operational Creditor prior to the service of demand notice cannot be termed as a 'pre existing dispute'. **LSI-514-NCLAT-2018(NDEL)**

- NCLAT held that NCLT has no jurisdiction to decide the legality of foreign decree in an application filed u/s 7,9 or 10 of IBC and its findings in such respect shall stand null and void in the eyes of law. **LSI-515-NCLAT-2018(NDEL)**

- NCLAT dismissed appeal filed u/s 7 of IBC, 2016 wherein NCLT initiated insolvency resolution process against the appellant (Corporate Debtor), it rejected the contention made by appellant that Respondent (SBI) was bound to comply RBI norms before filling this application. It held that RBI circulars cannot override the provision of IBC, the Code in itself is a complete code. Therefore, if NCLT is satisfied that there is existence of debt and default and application is complete in all respect, it is bound to admit the application. **LSI-516-NCLAT-2018(NDEL)**

- NCLAT dismissed appeal filed u/s 7 of IBC with cost of Rs. 1lakh, holding that the contention given by the Corporate debtor that there is existing dispute between the directors of the company and the application is pending u/s 241 and 242 of Companies Act, 2013, due to which moratorium could not be initiated, is not a valid ground to dismiss initiation of insolvency resolution process against the Corporate debtor. **Jagmohan bajaj v. Shivam fragrances (P.) Ltd. And another MANU/NL/0197/2018**

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

CBDT has amended prescribed New Forms 36 & 36A For Filing Appeal & Cross-Objection To The ITAT

The CBDT has amended the Income Tax Rules and prescribed new Form Nos. 36 and 36A for filing an appeal and cross-objection, respectively, to the ITAT. The new Forms are available for download in word format and pdf format.

CBDT Directive Reg Scope Of Enquiry In Limited Scrutiny Cases Selected Under CASS

The CBDT has issued a directive dated 28th of November, 2018 in which it has explained the scope of enquiry in Limited Scrutiny cases selected under CASS cycles 2017 and 2018 in the context of information provided by any law-enforcement /intelligence/ regulatory authority or agency.

CBDT Directive Reg Refund Fraud And Leakage Of Confidential Data

The CBDT has issued a directive dated 27 November, 2018 by which it has outlined the measures to be taken by the Department to avoid refund frauds and leakage of confidential data in accordance with the guidelines of the Central Vigilance Commission. All Pr. Commissioners of Income Tax, Pr. Directors of Income Tax (Inv) and Commissioners of Income Tax (Appeals) have been advised to ensure strict compliance of the guidelines and implement the same in letter and spirit.

CBDT Explains Procedure To Deal With Foreign Rulings Under BEPS Action 5

The CBDT has issued Instruction No. 6/2018 dated 22nd November 2018 by which it has explained in detail the procedure for dealing with Rulings received from other jurisdictions under BEPS Action 5. An explanation has been provided regarding the following taxpayer-specific rulings, being (i) rulings relating to preferential regimes; (ii) unilateral APAs or other cross-border unilateral rulings in respect of transfer pricing; (iii) cross-border rulings providing for a downward adjustment of taxable profits; (iv)

permanent establishment PE. rulings; (v) related party conduit rulings and (vi) Miscellaneous rulings which may be included at a later date as decided by the Forum on Harmful Tax Practices.

CBDT Directive Reg Exchange Of Information In Time Barring Assessment Cases

The CBDT has issued an important directive dated 22nd November 2018 to the Pr CCsIT and DGsIT regarding requests for exchange of information from field offices of time barring assessment cases.

CBDT Directive Reg Taxability Of Services Charges Charged By Hotels

The CBDT has issued an important directive dated 19th November 2018 On the issue of treatment of service charge taken from customers by the hotels/restaurants under the Income-tax Act, 1961.

CBDT amends rule 114 read with section 139A of the Income tax act to provide for apply the pan no where mother is single parent and requirement of pan number in certain more situation

The CBDT vide notification no. 82/2018/F.No. 370142/40/2016-TPL (Part-I) dated 19.11.2018 has amended rule 114 read with 139A of the Income tax act to provide for pan no. where the mother is single entity and further it provides for more situation where requirement of pan no has been made mandatory.

Setting up of Tribunal for hearing benami property case

The Central Govt vide notification no. Notification No. 81/2018/F.No.370149/194/2017-TPL dated 12.11.2018 under Prohibition of Benami Property Transactions Act, 1988 has set up a Appellate Tribunal at New Delhi to hear appeals against the orders of the Adjudicating Authority under the said Act.

CASE LAWS

DOMESTIC CASE LAWS

[2018] 100 taxmann.com 266 (Karnataka), Smt. Madhu Solanki vs ITO

Where Tribunal, without considering material placed on record by assessee, upheld additions under section 68 made to income of assessee in respect of bogus creditors and further such additions resulted in huge gross profit ratio which could not arise in type of business of

assessee, impugned additions were unjustified and matter was to be reconsidered afresh by Tribunal.

[2018] 100 taxmann.com 330 (SC), PCIT vs BMA Capfin Ltd

Where High Court upheld order passed by Tribunal holding that in case of assessee's merger with another company, subsequent assessment order passed in name of assessee company was a nullity, SLP filed against said decision was to be dismissed.

[2018] 100 taxmann.com 284 (Bombay), PCIT vs Smt. Kayan Jamshid Pandole

Even if payer company had not paid tax on dividend distribution under section 115-O, exemption would be allowed to receiver in terms of section 10(34).

[2018] 100 taxmann.com 269 (Chennai - Trib.), Arulmigu Devi Karumariamman vs ITO

Where assessee temple was granted approval under section 10(23C)(v) in year 1989 and same was renewed from time to time till assessment year 2014-15 and, thereafter, Commissioner (Exemptions) granted fresh approval from assessment year 2016-17, since approval was granted from 1989 and assessee was seeking only renewal of earlier approval, Commissioner (Exemptions) was unjustified in restricting approval from assessment year 2016-17 and approval ought to be renewed from assessment year 2015-16.

[2018] 100 taxmann.com 146 (Bangalore - Trib.), Microfinish Valves (P.) Ltd vs ACIT

Deemed dividend can be assessed only in hands of a person who is a shareholder of lender company and not in hands of a person other than a shareholder.

INTERNATIONAL TAXATION

100 taxmann.com 265 (Delhi - Trib.), ONGC vs DDIT

Where payment was made for CMG's membership by ONGC for non-exclusive and non-transferable licence to use technology only for internal business purpose, since there was neither sale nor licence of copyright in any kind of software or technology, such payment could not be held to be reckoned as royalty.

100 taxmann.com 280 (Mumbai - Trib.), DCIT vs Hemant Mansukhlal Pandya

Where additions were made to income of assessee, who was a non-resident since 25 years, since, no material was brought on record to show that funds were diverted by assessee from India to source deposits found in foreign bank account, impugned additions were unjustified.

100 taxmann.com 230 (Bangalore - Trib.), DCIT vs IBM India (P.) Ltd

There being no provision in DTAA to tax fees for Technical Services, payment made by assessee to avail technical service of its AE, would be taxed as per article 7 but in absence of PE in India, said income was not chargeable to tax in India.

100 taxmann.com 281 (Mumbai - Trib.), dcit vs Merill Lynch Capital Market

In case of assessee, a Spain based company, engaged in real estate development activities in India, capital gain arising from sale of shares of various companies was not taxable in India by virtue of article 14(6) of India-Spain DTAA.

99 taxmann.com 40 (Madras), DIT vsTVS Motors Co. Ltd

Where assessee-company developed basic engine and sent same to a non-resident company of Austria to design a new 3-valve cylinder head for improvement of fuel efficiency, performance and meeting Indian emission standard, payment made to Austrian company would not constitute royalty.

TRANSFER PRICING

100 taxmann.com 295 (Delhi - Trib.), Suzuki Motorcycles (I) (P.) Ltd. vs DCIT,

Where T.P. adjustment made by TPO in respect of AMP expenses was based on bright line test, since issue of applicability of Bright line test was pending consideration of Apex Court, matter was to be remitted back for re-consideration.

100 taxmann.com 165 (Mumbai - Trib.) Jabil Circuit India (P.) Ltd vs ACIT,

Where TPO rejected ALP of cost allocated to assessee and made additions by stating that assessee failed to produce supporting documents/evidence to substantiate that services were rendered by AE, however, it was found that assessee's allocation of expenses was based upon a global agreement between AEs and was supported by CPA certificate, additions so made were to be set aside.

100 taxmann.com 279 (Mumbai - Trib.), Firmenich Aromatics Production (India) (P.) Ltd vs ITO

Where assessee sold similar products to AEs as well as Non-AEs, in view of fact that there were huge differences between two transactions on account of volume, geographical locations, functions performed and risk assumed, CUP could not be used as most appropriate method for determining ALP of international transactions.

DCIT vs G S Engineering & Constructions India (P.) Ltd, 100 taxmann.com 66 (Delhi - Trib.)

Where assessee had made voluntary TP adjustment qua its international transaction for providing engineering design services to its AE, and it had excluded same from export turnover in accordance with a computation mechanism provided in section 10A, suo motu TP adjustment made by assessee was liable to be allowed under section 10A.

CIT vs Hindustan Unilever Ltd, 99 taxmann.com 135 (SC)

SLP dismissed against High Court ruling that while determining ALP of international transactions, benchmarking has to be done only on AE transactions and not for entire turnover

COMPLIANCE CALENDER DURING THE MONTH OF DECEMBER 2018

S. no	Event Date	Act	Application Form	Obligation
1	7th December 2018	Income Tax	Form No. 27C (TCS)	Monthly filing of forms as received in November - 2018
2	7th December 2018	Income Tax	Challan No. ITNS-281	Monthly payment of TDS/TCS deducted/collected in November 2018
3	11th December 2018	GST	GSTR -1	Monthly Return of Outward Suppliers where annual turnover is exceeding 1.5 crore for November 2018
4	15th December 2018	Income Tax	Challan No. 280	Quarterly payment of Advance Income Tax by All Assessess(75%) (except 44AD cases)
5	15th December 2018	Income Tax	Form No. 16 B	Monthly issue of TDS Certificate - Section 194-IA for October 2018
6	15th December 2018	Income Tax	Form No. 16 C	Monthly issue of TDS Certificate - Section 194-IB for October 2018
7	15th December 2018	Providend Fund	Electronic Challan cum Return (ECR)	Monthly E-Payment for PF for November 2018
8	15th December 2018	ESI	ESI Challan	Monthly payment of ESI for November 2018
9	20th December 2018	GST	GSTR - 5	Monthly return for Non resident for November 2018
10	20th December 2018	GST	GSTR - 5A	Monthly return for OIDAR services to unregistered recipients for November 2018
11	20th December 2018	GST	GSTR - 3B	Monthly payment of GST for November 2018
12	30th December 2018	Income Tax	Form No26QB	Monthly filing challan-cum-statement for TDS - Section 194-IA for October 2018

13	30th December 2018	Income Tax	Form No. 26QC	Monthly filing challan-cum-statement for TDS Section 194-IB for October 2018
14	31st December 2018	GST	ITC-04	Quarterly Details of goods/capital goods sent to job worker and received back
15	31st December\ 2018	GST	GSTR-9	Annually GST Return for registered person other than composition dealer, ISD, Casual Taxable person, Non-resident taxable person
16	31st December 2018	GST	GSTR-9A	Annually GST Return for composition dealer
17	31st December 2018	GST	GSTR-9C	Annually GST Audit where annual turnover is exceeding Rs. 2 Crores
18	31st December 2018	ROC	AOC-4 & MGT-7	Annually Accounts filing on MCA

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