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MONTHLY REPORT FOR FEBRUARY, 2012

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REPORT ON SEBI-SECURITIES LAWS:

MODIFICATIONS/CIRCULARS/REGULATIONS/RULES:

- Securities and Exchange Board of India –KYC (Know Your Client) Registration Agency Regulations, 2011 – LAD-NRO/GN/2011-12/29/36772 dated 2nd December, 2011.
- Securities and Exchange Board of India (Debenture Trustees) (Second Amendment) Regulations, 2011. Notification No. LAD-NRO/GN/2011-12/30/37715 dated 14th December, 2011.
- KYC-Once client has done KYC with intermediary he need not undergo same process again with another intermediary. Cir.No.MIRSD/Cir-23/2011 dated 2nd December, 2011.
- Guidelines for intermediary, KRAs and in-person verification. Cir.No. MIRSD/Cir-26/2011 dated 23rd December, 2011.
- Debenture Trustee- Review of regulatory compliance, periodic reporting and contents of trust deed. CIR/MIRSD/25/2011 dated 19th December, 2011.
- Public issue of debt securities –Prohibition on payment of incentives. CIR/IMD/DF/22/2011 dated 26th December, 2011.
- SEBI (Credit Rating Agencies) (Second Amendment) Regulations, 2011 – Amendment in regulation 14. Notification No. LAD-NRO/GN/2011-12/31/39022 dated 27th December, 2011.
- Changes in re-investment period of FII debt limit. CIR/IMD/FIIC/1/2012 dated 3rd January, 2012.
- Disclosure of track record of the public issues managed by merchant bankers. Circular No.MIRSD/1/2012 dated 10th January, 2012.
- Qualified foreign investors route for investment in equity shares of Indian company made operational. CIR/IMD/FII&C/3/2012 dated 13th January, 2012.
- SEBI Board meeting – Manner of increasing minimum public shareholding to comply with Securities Contracts Regulation (Rules), 1957. Press Release No. 2/2012 dated 3rd January, 2012.

- Qualified foreign investors allowed to directly invest in Indian equity market- Press release dated 1st January, 2012.
- FAQs on Takeover Regulations, 2011 (issued on 12th December, 2011).

LEGAL CASES

- ▶ **SVPCL LTD. V. SECURITIES AND EXCHANGE BOARD OF INDIA (AP) 49:** The question whether the SEBI Board can proceed against the petitioner as proposed under the impugned show-cause notice can only be decided after the petitioner files its objections and makes out a case of lack of jurisdiction on the part of the SEBI Board with reference to the interpretation of scope and object of the Act and provisions thereof, besides the Regulations and the Guidelines, if any, issued under the Act. [Sections 11 and 11B of SEBI Act, 1992 read with section 73(2)/(5) of Companies Act, 1956]
- ▶ **GUJARAT NRE MINERAL RESOURCES LTD. V. SECURITIES AND EXCHANGE BOARD OF INDIA (SAT) 37:** Where the Board of directors of a listed investment company decides to dispose of a part of its investment in the company to raise funds for one of its projects to acquire coal mining leases abroad, but while making corporate announcement to the stock exchange about its new project does not inform the stock exchange how the new project is being funded, the failure to inform the stock exchange about disposal of a part of investment by the company does not constitute 'price sensitive information' requiring mandatory disclosure to stock exchange. [Regn. 2(1)(ha) of SEBI (Prohibition of Insider Trading) Regulations, 1992.]
- ▶ **RAGHU HARI DALMIA V. SECURITIES AND EXCHANGE BOARD OF INDIA (SAT) 31:** The word 'acquire' implies acquisition of voting rights through a positive act of the acquirer with a view to gain control over the voting rights. Where the admitted position of the parties is that the appellants-promoters of the company did not participate in the buy-back of shares of the company and that there was no change in their shareholding, and the percentage increase in their voting rights was not by reason of any act of theirs but was incidental to the buyback of shares of other shareholders by the company, such a passive increase will not attract sub-regulation (1) of regulation 11. [Regn. 11 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997]

COMPETITION ACT, 2002 - BY SHRI PRADEEP K MITTAL- 9811044365

- The Unitech is one of the known builders. There are other big developers and builders, having superior economic resources and strength, who are providing their services in development of residential units in this range in the relevant geographic market. It cannot also be held that Unitech can operate itself independently of the

competitive forces prevailing in the relevant market and can affect the competitors in its favour. Therefore, the Competition Commission viewed that, prima facie, Unitech cannot be said to be a dominant enterprise in the relevant market. Since Unitech is not in a dominant position in the relevant market, any question of abuse within the meaning of provisions of Section 4 of Competition Act, will also not arise. **Sh J M Chhabra Vs. United Ltd MANU/CO/0089/2011.**

- The complainant/informant is the largest corporate travel company in India. The informant alleges that in November 2008, most of the international airlines, including Singapore Airlines and Silk Airlines announced 100% cuts in the commission of the agents on Airlines tickets. Some of the travel associations, who were unhappy with the reduction of commission, formed a cartel and as a result thereof, TAFI, TAAI and IAAI started intimidating the member travel agents and advised all their members to boycott selling of tickets of these airlines and divert bookings to other airlines. It has been further alleged that since 3rd/4th week of December, 2008, the opposite party have been continuously sending emails to their member travel agents including informant who did not boycott Singapore and Silk Airlines.
 - ▶ It has been alleged that TAFI vide its letter dated 13.02.2009 conveyed to the informant that the managing committee of TAFI has unanimously decided to suspend the informant from its membership and also informed that the suspension of informant will be conveyed to IATA and all others concerned. It has been alleged by the informant that the aforesaid suspension notice was issued with the sole aim to tarnish the image of the informant in the international travel agent community and amongst its customers.
 - ▶ It has been averred that by not boycotting the aforesaid airlines the informant has not affected the business interest of any of the members of opposite parties and on the contrary has only followed the guidelines and business policy of its principals and has acted in accordance with the international norms, which are pro consumer. It has been further stated that the call of boycott was taken by opposite parties unilaterally and it cannot be imposed on their members.
 - ▶ The informant, therefore, requested the Director General, MRTP Commission to register the complaint and initiate inquiry in the alleged cartelisation and monopolistic and restrictive trade practices being adopted by opposite parties.
 - ▶ The Director General (I&R), MRTP Commission undertook a preliminary investigation on the basis of the complaint filed by the informant and asked the opposite parties to file their comments on the complaint made by the informant vide his letter dated 16.03.2009. TAFI and TAAI filed their replies contending that TAAI is only an association of members and is not involved in any trade or vocation on its own and, therefore, there is no question of TAAI being involved in cartelisation or adopting restrictive trade practice as alleged. The matter was transferred to the competition Commission of India.

- ▶ The Competition Commission formed an opinion that there existed a prima facie case for directing the Director General to conduct investigation into the matter. The DG concluded that participation by the consequent members of these associations by refusing to deal with Singapore airlines acting upon the boycott call given by TAAI, TAFI & IAAI amounted to vertical agreement between these associations and their members which has resulted into appreciable adverse effect on competition within India and thus, it violative of section 3(4) read with section 3(1) of the Competition Act.
- ▶ The Competition Commission observed that the DG, besides finding the conduct of the opposite parties contravening the provisions of section 3(3)(b) has also come to the conclusion that the participation by the consequent members of these associations by refusing to deal with Singapore airlines acting upon the boycott call given by TAAI, TAFI & IAAI amounted to vertical agreement between these associations and their members which has resulted into appreciable adverse effect on competition within India and thus, it is violative of section 3(4) read with section 3(1) of the Act **FCM Travels Solutions (India) Ltd Vs. Travel Agents Federation of India MANU/CO/0093/2011.**
- The Competition Commission observes that there is no evidence or material adduced by the informant so as to draw an inference that there exists any agreement among the Opposite Parties with regard to fixation of high interest rates and other allegations.. Therefore, none of the clauses of section 3(3) of the Act relating to anti-competitive agreements among the market players engaged in providing identical services is applicable.
- ▶ With regards to the applicability of Section 4 of the Act in the matter, the Commission notes that as per reports in public domain the market share of the opposite parties does not make them individually a dominant player either in the market of provision of banking and financial services in India or in relevant market of home loan market within the meaning of explanation (a) to Section 4 of the Act. The provisions of Section 4(1) prescribe that no enterprise or group shall abuse its dominant position. 'Group' for the purposes of Section 4 as per explanation (c) to the said Section 4 has been assigned the same meaning as given in Clause (b) of Explanation to Section 5. The Commission notes that the Opposite Parties in this case do not qualify to be called as enterprise falling in same group within the meaning of clause (b) of Explanation to Section 5. Since there is no case of dominance either individually or in group by these banks, any question of abuse within the meaning of provisions of Section 4 also does not arise in this case. The Commission is of the opinion that there is no evidence/material to establish contravention of any of the provisions of Section 3 or 4 of the Act in the matter. Mohd Tariq Sultan Vs. HSBC & other banks. MANU/CO/0086/2011.
- In a case where the Applicant, after signing the MOU and after draft buyers agreement was sent to him, made an inquiry from HUDA and was told that a complex meant for IT/ITes cannot be used for commercial purpose and no

conversion and of user was possible under the rules. This inquiry which the applicant made after receiving the draft 'buyers' agreement' from Opposite Party in fact was required to be made by the applicant before signing the MOU. It was made clear to the applicant by the OP that the licence given to it was only for developing a complex for IT/ITes. This fact is mentioned in the MOU itself with license number and date of license. The applicant was required to be more vigilant and ought to have made aforesaid inquiry from HUDA before signing the MOU. The applicant is not a naive person. The applicant claims to be a reputed commercial venture and was going to invest Rs. 60 crores for purchase of commercial space. It had all resources at its command to make the inquiry before signing the MOU instead of believing an assurance given by the OP contrary to the licence granted to it.

- In the light of the above fact, the Competition Commission observed that there is neither an issue of competition involved in this case nor the Commission need to consider the issues of dominant player and relevant market etc. as these issues are not relevant. The application filed by the applicant seems to be totally misconceived and does not disclose a prima facie case for the Commission to order investigation. Moreover the Commission does not have powers to grant damages for tortious liability. *Abhir Infrastructure (P) Ltd Vs. Emmar MGF Land Limited.* MANU/CO/0065/2011.

CENTRAL EXCISE –BY SHRI PRADEEP K MITTAL-9811044365

- MS Scrap and Iron Scrap arising out of repair activities is not liable to excise duty as the repair activities cannot be equated with the activity of manufacturing . Any product arising out of manufacturing activity is liable to be excise duty. *Grasim Industries Ltd Vs. Union of India* 2011(10) SCC 653.
- The liability of the Excise Department to pay interest arises after the expiry of three months from the date of receipt of application seeking refund of duty under Section 11BB provided the refund is not made within the aforesaid period. *Ranbaxy Laboratories Ltd Vs. UOI* 2010(10) SCC 292
- The appellant manufacture tubes upon receipt of orders received from its customers and wherever, plastic cap is affixed on the tubes, in such cases, the value of cap is added in the assessable value and excise duty is paid but, however, whenever, cap is supplied free of charge by the customer, then value of such cap is not required to be added to the assessable value. *Essel Propack Ltd Vs. CCE* 2011(10) SCC 773. SC.
- The Circulars issued by the CBEC comes into effect from the date of issue and not from the date it has been notified by way of public notice. *CCE Vs. Kedia Vanaspathi Ltd* 2012(275) ELT 46 (AP).

- If a job workers has paid duty at a place “A” and the Department has accepted the payment of such duty from the Job Worker and such goods have been transferred for manufacture of finished goods at place “B”, then Department cannot allege that no duty was payable at place “A” and, therefore, no cenvat credit shall be allowable for the duty paid at place “A”. Once duty has been paid, the assessee is entitled to avail Cenvat Credit of such duty paid. CCE Vs. Nestle India Limited 2012 (275) ELT 49 (Bom).
- The “assessment” means (a) computation of rate of duty (b) assessable value of goods (c) whole procedure laid down under Central Excise Act or Customs Act for imposing duty liability upon manufacturer or importer. The “goods” means something which can ordinarily come to market to be bought and sold, is liable to excise duty whether they are manufactured or produced. CCE Vs. Motorala India Limited 2012(275) ELT 53 (Kar).
- When the assessee has taken 50% cenvat credit of excise duty paid on the capital during the year 2001-2002 and subsequent 50% was taken during the period 2002-2003. Capital goods remained lying in the factory for installation and process of erection completed. The condition for availment of cenvat credit that “ capital goods” were in possession and use for the manufacture” has been fulfilled. CCE Vs. Ispat Industries Ltd 2012(275) ELT 79 (Bom).
- The Cenvat Credit has been availed in respect of quantities shown in the Invoices – whereas the quantity received is less as there was a transit and storage loss of Molasses – and such loss is within the permissible limit of 2% prescribed under the Rules. The Cenvat Credit cannot be denied on the variation of quantities. CCE Vs. Somaiya Organo Chemicals Ltd 2012(275) ELT 83 Tri.
- The security deposit which has been forfeited, cannot be held to be additional consideration for the purpose of valuation of excisable goods. Krishna Polymers Vs. CCE 2012(275) ELT 99 (Tri).
- The sale has taken place at distributor place, distributor commission and freight up to distributor place would be added to the assessable value for the calculation of excise duty. When the Department has issued two show cause notice for two different period, in the subsequent show cause notice, the department cannot invoke extended period of limitation. Hindustan Coca-Cola Beverages Ltd Vs. CCE 2012 (275) ELT 103 (Tri).
- In case, the duty has been paid twice by the assessee and refund of duty has barred by time, the assessee cannot seek re-credit suo-moto in respect of duty paid twice. Vighnagar SSK Ltd Vs. CCE 2012(275) ELT 108 (Tri).
- The change name of the company cannot dis-entitle the company to take the cenvat credit in respect of those invoices which are in the earlier name. Show India (P) Ltd vs. CCE 2012(275) ELT 128 (Tri).

- The Cenvat Credit of Service Tax paid on “Architect Service” received for construction of “Rain Water Harvesting System” to augment the underground water supply – since the assessee is engaged in the manufacture of “aerated water”. Pepsico India Holding Co (P) Ltd Vs. CCE 2011(24) STR 491 (Tri).

SERVICE TAX - BY SHRI PRADEEP K MITTAL-9811044365

- The activity of only procuring orders for the principal cannot be treated as “Clearing and Forwarding Agent” and, therefore, cannot be taxed under this Head. Under the C&F Agent, besides procuring orders, there must be handling of goods as well. CCE Vs. Shivangi Steel (P) Ltd 2011(24) STR 701 (Tri) Delhi.
- Mere non registration and non-payment of service tax cannot be equated with deliberate suppression of facts with intent to evade payment of duty and, therefore, extended period of five years as provided under Section 11A is not invocable. CCE Vs. Global Software Solutions (P) Ltd 2011(24) STR 707 (Tri).
- It is well settled that a category of “service” which specifically covered under the Service Tax Liability from a specific date cannot be taxed under any other headings prior to that date. Intertoll India Consultants (P) Ltd Vs. CCE 2011(24) STR 611 (Tri).
- The assessee, while manufacturing motor vehicles, is also engaged in providing technical know-how to another company on payment of royalty, is not liable to pay Service Tax under “Consulting Engineering Service”. Kinetic Engineering Ltd Vs. CCE 2012(25) STR 26 (Tri).
- The assessee is not liable to pay Service Tax in respect of “Services” received from outside India, prior to 18.4.2006 i.e. before the introduction of Section 66A of the Finance Act, 1994. In other words, the assessee would be liable to Service Tax (as a recipient of service) to pay tax for any services after 18.4.2006. Oil India limited Vs. CCE 2012(25) STR 33 (Tri).
- The contribution towards PF and ESI for the employees is not liable to be included in the gross value of consideration for calculation of “Service Tax” by a person who was engaged in “Man Power Supply Services”. Young Brothers Transporters Vs. CCE 2012(25) STR 35 (Tri).
- The Invoices were in the name of the head office of the company and in the name of the factory, such defect is curable and condonable. The substantive benefit of cenvat credit cannot be denied on this sole ground. Parekh Plast (India) (P) ltd Vs. CCE 2012(25) STR 46 (Tri).

- The telephone service used for sales promotion is an eligible input service and, therefore, cenvat credit of service tax paid on telephone bills, could be taken. Agsar Paints (P) Ltd Vs. CCE 2011(24) STR 422 (Tri).
- The discount and incentives received by the advertising agency from print media is not in the nature of “ consideration for any services rendered” and, therefore, not taxable under the “Advertising Agency Services”. P Gautam & Co Vs. CCE 2011(24) STR 447.
- Receiving packing materials, raw materials, loading and unloading the same would not fall under the head “Cargo Handling Services” since the raw materials has been used for purpose of repacking from bulk to retail and also for labeling and re-labeling as this amounts to “manufacture” and on which the excise duty would be payable and hence, no service tax would be payable on the activities of receiving, handling, loading and unloading of packing materials and raw materials. Subhash Khandelwal Construction (P) Ltd Vs. CCE 2011(24) STR 458. (Tri).
- The cenvat credit availed has been reflected in the Monthly Return but, however, there is no column in the Return to show the service on which the cenvat credit has been availed, the assessee cannot be blamed for not making proper disclosure and invoking the extended period of limitation. It was for the department to have asked for the nature of service on which credit has been availed. The demand being barred by time. CCE Vs. Medicap Ltd 2011(24) STR 572 (Tri).
- The input service need not be confined up to the stage of manufacture or clearance from the depot, but has to be considered in the light of the fact that whether it is necessary for the business activities of the company. ABB Ltd Vs. CCE2009(15) STR 23 (Tri-LB).
- Despite the findings of suppression of the part of the assessee, but if the assessee has paid the Service Tax and interest immediately upon being pointed out by the revenue authorities, the penalty has rightly been set aside by the Commissioner (Appeal). CCE Vs. Competent Automobiles Co Ltd 2011(24) STR 561.
- If a person is obtaining orders by canvassing, this activity cannot be termed as “C&F Agent” service since the persons is not directly involved in material handling (which is must for C&F Agent Service) and, therefore, no Service Tax payable on the amount received by the party. CCE Vs. Risansi Industries Ltd 2011(24) STR 575 (Tri).
- Taxi Services, Ticket Booking Service, Transport Services, Insurance Services, Pest Control Service, Annual Maintenance Contract, Delegation and Convention Service has a connection with the business of the company and, therefore, service tax on such inputs service, can be availed as Cenvat Credit. Sundaram Clayton Ltd Vs. CCE 2012(25) STR 172 (Tri).

- Where the invoices were drawn in their name and sales tax was charged, it cannot be case of providing C&F Agents Service and rather would be a case of sale of goods by the assessee and, therefore, no service tax would be leviable. Kamal Auto Finance Ltd Vs. CCE 2012(25) STR 181 (Tri).
- The promotion of brands was not a part of Business Auxiliary Services upto 31.6.2010 and not promotion of branded goods and, therefore, no service tax would be payable for the period July, 2003 to Feb 2007. Zenith Computers Ltd Vs. CCE 2012(25) STR 182 (Tri).

COMPANIES ACT 1956 - BY SHRI PRADEEP K MITTAL-9811044365

- It is not enough to show that there is a just and equitable cause for winding up the company, though that must be shown as preliminary to the application of Section 397. It must further be shown that the conduct of majority shareholders was oppressive to the minority and events have to be considered not in isolation but as part of consecutive story. There must be continuous acts on the part of the majority continuing up to the date of petition, showing that the affairs of the company were conducted in a manner oppressive to some part of the members. The conduct be burdensome, harsh and wrong and mere lack of confidence between the majority and minority is not enough. Chatterjee Petrochem India (P) Ltd Vs. Haldia Petrochemicals Ltd 2010(10) SCC 466. SC
- At the stage of issuance of Summons for Directions to convene a meeting, though Company Judge had to apply its mind, prima facie, on genuineness of Scheme - If at threshold stage of directions to convene a meeting hearing was required to be given to members, scheme of Companies (Court) Rules 1959 would become unworkable. Chembra Orchard Products Ltd Vs. Regional Director. AIR 2009 SC 1278.
- The ROC cannot launch prosecution against the persons unless there is a specific allegation of mis-statement or concealment of facts in the Balance Sheet since the balance sheet has been signed two director of the family company and the prosecution launched by the ROC has been quashed. Dilip Kapur Vs. ROC 2011(105) CLA 442 (Madras).
- The prosecution launched by the SEBI has been quashed on the ground that the concerned director has resigned much before the commission of the offence. The Section 27 of SEBI is para-materia with Section 141 of the NI Act, and hence, on the principal analogous, the complaint is liable to be quashed and the accused cannot be called upon to face ordeal of the trail. V K Singh Vs. SEBI 2011(105) CLA DHC 437.
- Where the consumers has invoked the remedy under the Consumer Protection Act, the writ petition has been filed by the lender saying that the proceedings before the consumer court is liable to be quashed as there is a arbitration clause in the agreement executed between the parties. The High Court, while dismissing the

petition, has held that the Consumer Protection Act, provides additional remedy to the consumers. HSBC Asset Management (India) (P) Ltd Vs. Smt Mani Rao 2011(105) CLA 472 (AP).

- The petition under Section 397 Companies Act, 1956 would be maintainable only when on the basis of materials brought on record, the court comes to the findings that the company is liable to be wound up on just and equitable grounds and the majority, through the board of directors, is oppressing the minority by abusing their dominant position. The failure of the company to convert 35,00,000 warrants into equal number of equity shares may amount to breach of contract within the meaning of Section 73 of the Contract Act seeking monetary compensation but not proceedings under Section 397 of the Companies Act, 1956 , Orissa Sponge Iron & Steel Ltd Vs. Bhushan Steel Ltd 2011(105) CLA 510. Orissa.
- When a private limited company has been converted into a public limited company, restriction on transfer of shares would get diluted. Yet, the company still have a right to refuse transfer of shares in case the company feels that the transferee is undesirable person and the enrolment of such person, as a member, would be prejudicial to the interest of the company. Dr Percy Rutton Kavasmaneck Vs. Gharda Chemicals Ltd 2012(106) CLA 208 Bombay High Court.

**ARBITRATION & CONCILIATION ACT, 1996 - BY SHRI PRADEEP K
MITTAL-9811044365**

- In case a party makes a demand to the other demanding appointment of arbitrator and the other party does not appoint within a period of 30 days from the date of demand, the right is not closed on the expiry of 30 days but the party would be entitled to appoint the sole arbitrator so long as the other party has not filed the petition under Section 11 of Arbitration & Conciliation Act, 1996 for appointment of Arbitrator. Sikka Promoters (P) Ltd Vs. MCD 2011 (184) DLT 667. Delhi.
- The Delhi High Court has held that when the scope of hearing objections under Section 34 of Arbitration Act, 1996 to an Award is limited, then, the scope of hearing of an appeal against an order dismissing the objections will have to be further limited. There has to be gross perversity or gross illegality which calls for interference by the appellate Court. Religare Securities Ltd Vs. Wealthmore Securities Ltd MANU/DE/3495/2011.

- If under the Customs Act, the obligation of the partnership firm to export the goods had been extended up to 1992 and where a partner has resigned in the year 1991, no liability on such partner can be fastened since he resigned 1991 much before the date when the liability on the partnership firm fastened. *Kashmiri Lal Vs. Union of India* 2010 (173) DLT 714. Delhi.
- If a bidder has submitted the bid which provisionally accepted by the principal and later on, the bidder has unilaterally imposed certain conditions upon the principal and consequently, there was no award of contract to the bidder. Such action of the principal cannot be challenged being arbitrary. The Writ Court will not interfere in such a circumstances. *ABW Infrastructure Ltd Vs. Rail Land Dev Authority* 2010 (174) DLT 117 Delhi DB.
- In case the managing director of a company, against whom the complaint under Section 138 of NI Act has been filed for dishonour of a cheque, has not been made a party, yet he would be liable to be punished since, by virtue of his office, he is liable for the day to day affairs of the company. As per Section 319 of Cr PC, the court can, either on the application or suo-moto, can implead any one as an accused if in the opinion of the court, such person appears to have committed an offence. *VK Agarwal Vs. United Phosphorus Ltd* 2011(184) DLT 247.
- In a complaint under Section 138 of NI Act for dishonour of cheque, the complainant is required to make very specific and categorical averment that director or other persons were responsible for day to day affairs of the company and also at the same time, clearly and specifically allege the manner and situation as to how they are responsible for day to day affairs of the company. *Meera Gupta Vs. Madan Lal* 2011(184) DLT 570 Delhi.
- The Supreme Court in the case of *Godavari Sugar Mills Ltd Vs. State of Maharashtra* 2011(2) SCC 439 has discussed the entire law relating to powers of the court under Writ Petition and held that (i) writ petition would not be maintainable to enforce civil remedy arising out of breach of contract or tort (ii) upon infringement of statutory right or fundamental right, the court, while declaring the right in favour of a party, can also order for consequential relief including order for payment of money to the petitioner (iii) writ of mandamus shall not normally be exercised for ordering mere payment of money or refund of money (iv) the money has been collected totally without authority of law, high court can, in writ petition, order for refund of money to the petitioner.

- If the lease deed provided for three month notice for termination of lease deed and in case the lease deed has provided notice of three months for terminating notice, the tenant cannot claim three month notice after the expiry of lease deed. Bajaj Allianz General Vs. Ashok Sarin 2011(176) DLT 773 Delhi.
- Where any quasi-judicial order or administrative order is passed in contravention of the Main Act, such order could be termed as ultra-vires and could be corrected in a Writ Petition. Mohd R Haque Vs. Central Wakf Council 2011(176) 753 Delhi.
- If the probation period has expired, there cannot be any automatic confirmation. There has to be a letter confirming the services of an employee failing which, the employee shall continue to be on probation. Gautam Kant Nirmaan Vs. Govt of NCT 2010(174) DLT 135 (Delhi DB).
- If a person keeps on writing letters to the authorities concerned, such letters shall not extend the period of limitation for invocation of legal remedy prescribed under the law, unless, such representation/letters are statutory in nature. The petition could be dismissed on the ground that the remedy is barred by limitation. Govt of Delhi Vs. Naresh Kumar 2010(173) DLT 563 Delhi DB.
- There cannot be a right to sue until there is an accrual of the right asserted in the suit and its infringement, or at least, a clear or unequivocal threat to infringe that right, by the defendant against whom the suit is instituted. Mt Balo Vs. Mt Koklan, AIR 1930 Privy Council, 270.
- Where any person knowingly accepts any benefit of a contract or an order, he is estopped to deny its validity or binding effect on him. A party cannot be permitted to blow hot and cold. A person may be precluded by his action or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had. Section 115 of Evidence Act, 1872. Cauvery Coffee Traders. Vs. Hornor Resources International Co Ltd 2011(10) SCC 420.
- The suit for specific performance can only be filed at a place where the immovable property is located – although the prayers are couched in a different manner. Where the land is located at Nanital, the suit cannot be filed in Delhi. Anil Verman Vs. Raheja Developers (P) Ltd. 2011(184) DLT 646 (Delhi DB).
- In a suit for specific performance of immovable property, where both the parties have fixed a particular date for payment of money and conclusion of deal, minor extension of such date, cannot be construed that the time was not essence of the contract.
- The buyer has to allege and prove that he was/is willing to perform the contract and it is not necessary that the amount must be deposited in the court or tender the

money to the party. Coromandel Indag Products (P) Ltd Vs. Garuda Chit 2011(8) SCC 601. SC.

- The Limitation Act, 1963 applies to the court and not to quasi-judicial authorities or tribunals. State of Jharkhand Vs. Shivam Coke Industries 2011(8) SCC 656. SC.
- The compensation cannot be granted to the passenger just because of some inconvenience or sufferance but the compensation would be payable only when there is gross negligence or deficiency of service. The compensation was not allowed where the flight could not take off due to bad weather and non-clearance by the ATC. Interglobe Aviation Ltd Vs. N Satchidanand 2011(7) SCC 463.
- A mere breach of contract does not entitle the aggrieved party to forfeit the amount of security deposit. The loss has to be pleaded and proved by the aggrieved party. The Airport Authority of India Ltd is bound to refund the security deposit. Airport Authority of India Limited Vs. RK Singhal 2011(185) DLT 648. Delhi.

LIMITATION ACT - BY SHRI PRAVEEN K MITTAL -9810826436

- In case time is prescribed for filing an appeal and thereafter maximum time is also prescribed upto which delay in filing of an appeal can be condoned, the courts/tribunal has no powers to condone the delay beyond the maximum time. Further, under Section 14 of Limitation Act, the time spent for pursuing remedy before wrong court, is liable to be excluded but there is no power to condone the delay as the case under Section 5 of Limitation Act, 1963. In his application under Section 14 of Limitation Act, the party has allege and prove that they have been pursuing remedy before wrong court diligently and good faith. Ketan V Parekh Vs. Special Director 2012(275) ELT 3 (SC).

TRADE MARK - BY SHRI PRADEEP K MITTAL-9811044365

- Where the products are sold under the brand name “L’OREAL” and the defendant started selling its products under the brand name “ TORREAL”, which is phonetically similar and liable to be injuncted from selling his products. L’OREAL Vs. Dushyant Shah 2011(183) DLT 595.

INDUSTRIAL & LABOUR LAWS - BY SHRI PRADEEP K MITTAL-9811044365

- The conveyance allowance and washing allowances are not includible in the definition of “wages” for the purpose of calculating the provident fund contribution payable by the employee under the provisions of Employees Provident Fund Act. 2011(184) DLT 591.Delhi.

CRIMINAL LAW - BY SHRI PRADEEP K MITTAL-9811044365

- In appropriate cases, the high court would be competent to quash the criminal proceedings (though of non-compounding in nature) pending against accused persons where both the parties have settled their disputes/difference and where the continuation of proceedings would be futile exercise and where the disputes are of civil nature. Shiji Vs. Radhika 2011(10) SCC 705.

IMPORTANT JUDGEMENT - BY SHRI PRADEEP K MITTAL-9811044365

- ▶ Imposition of one sided terms and condition amounts to 'unfair trade practice' as per the ratio pronounced by the Hon'ble Supreme Court of India in its landmark judgments reported in MANU/SC/0439/1986 : A.I.R 1986 S.C 1571 and MANU/SC/0772/1995 : A.I.R 1995 S.C 1811 and would also be hit by the provisions of Section 23 and section 27 of the Indian Contract Act, 1872.
- ▶ The Supreme Court in the case of Uttam Singh Dugal & Co. Ltd. v. Union Bank of India MANU/SC/0485/2000 : [2000] 39 CLA 1/[2000] 102 Comp Cas 118/[2000] 7 SCC 120 has held that income-tax returns showing transfer of shares of the Petitioners is an admission on the part of such person and he cannot be allowed to contend otherwise.

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