

PKMG LAW CHAMBERS

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MONTHLY LAW REPORT FOR FEBRUARY, 2019

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REGULATORY UPDATES (Notifications/Circulars)

Notification&Circular No.	Date of issue	Subject
<p style="text-align: center;">1. MINISTRY OF CORPORATE AFFAIRS</p> <p style="text-align: center;">NOTIFICATION – G.S.R.29(E).</p>	<p style="text-align: center;">15th January, 2019</p>	<p><u>Amendment in the National Company Law Tribunal Rules, 2016</u></p> <p>In exercise of the powers conferred by sub-section (1) and sub-section (2) of section 469 of the Companies Act, 2013 , the Central Government hereby makes the following rules further to amend the National Company Law Tribunal Rules, 2016, namely:-</p> <p>1. (1) These rules may be called the National Company Law Tribunal (Amendment) Rules, 2019.</p> <p>(2) They shall come into force on the date of their publication in the Official Gazette.</p> <p>2. In the National Company Law Tribunal Rules, 2016, in rule 71:-</p> <p>(i) In sub-rule (3), in clause (b) for the words “Central Government” the words “Regional Director” shall be substituted.</p> <p>(ii) In sub-rule (4), for the words “Central Government” the words “Regional Director” shall be substituted.</p>
<p style="text-align: center;">2.MINISTRY OF CORPORATE AFFAIRS</p> <p style="text-align: center;">NOTIFICATION – S.O. 368(E).—</p>	<p style="text-align: center;">22nd January, 2019</p>	<p><u>Specified Companies (Furnishing of information about payment to micro and small enterprise suppliers) Order,2019</u></p> <p>Whereas, the Central Government</p>

vide notification number S.O. 5622(E), dated the 2nd November, 2018 has directed that all companies, who get supplies of goods or services from micro and small enterprises and whose payments to micro and small enterprise suppliers exceed forty five days from the date of acceptance or the date of deemed acceptance of the goods or services as per the provisions of section 9 of the (hereafter referred to as “Specified Companies”), shall submit a half yearly return to the Ministry of Corporate Affairs stating the following:

- (a) the amount of payment due; and
 - (b) the reasons of the delay;
- And whereas, in exercise of power under section 405 of the Companies Act, 2013, the Central Government, considers it necessary to require “Specified Companies” to furnish above information under said section of the Act.

Now, therefore, in exercise of the powers conferred by section 405 of the Companies Act, 2013, the Central Government hereby makes the following Order, namely:-

1. Short title and commencement.-

(1) This Order may be called the Specified Companies (Furnishing of information about payment to micro and small enterprise suppliers) Order, 2019.

(2) It shall come into force from the date of its publication in the Official Gazette.

		<p>2. Every specified company shall file in MSME Form I details of all outstanding dues to Micro or small enterprises suppliers existing on the date of notification of this order within thirty days from the date of publication of this notification.</p> <p>3. Every specified company shall file a return as per MSME Form I annexed to this Order, by 31st October for the period from April to September and by 30th April for the period from October to March.</p>
<p>3. MINISTRY OF CORPORATE AFFAIRS NOTIFICATION- G.S.R. 43(E).</p>	<p>22nd January 2019</p>	<p><u>Amendment in the Companies (Prospectus and Allotment of Securities) Rules, 2014</u></p> <p>In exercise of the powers conferred by section 26, sub-section (1) of section 27, section 28, section 29, sub-section (2) of section 31, sub-sections (3) and (4) of section 39, sub-section (6) of section 40 and section 42 read with 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. Short title and commencement.—(1) These rules may be called the Companies (Prospectus and Allotment of Securities) Amendment Rules, 2019.</p> <p>(2) They shall come into force on the date of their notification in the Official Gazette.</p> <p>2. In the Companies (Prospectus and</p>

		<p>Allotment of Securities) Rules, 2014, in rule 9A, after sub-rule (10), the following shall be inserted, namely:— “(11) This rule shall not apply to an unlisted public company which is:— (a) a Nidhi; (b) a Government company or (c) a wholly owned subsidiary.”.</p>
<p>4. MINISTRY OF CORPORATE AFFAIRS G.S.R. 42(E).—</p>	<p>22nd January 2019</p>	<p><u>Amendment in the Companies (Acceptance of Deposits) Rules, 2014</u></p> <p>In exercise of the powers conferred by clause (31) of section 2 and section 73 read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013, the Central Government, in consultation with the Reserve Bank of India, hereby makes the following rules further to amend the Companies (Acceptance of Deposits) Rules, 2014, namely:-</p> <ol style="list-style-type: none"> 1. (1) These rules may be called the Companies (Acceptance of Deposits) Amendment Rules, 2019. (2) They shall come into force on the date of their publication in the Official Gazette. 2. In the Companies (Acceptance of Deposits) Rules, 2014 (hereinafter referred to as the said rules), in rule 2, in sub-rule (1), in clause (c), in sub-clause(xviii), after the words “Infrastructure Investment Trusts,” the words “Real Estate Investment Trusts” shall be inserted. 3. In the said rules, in rule 16, the following Explanation shall be inserted, namely:-

		<p>“Explanation.- It is hereby clarified that Form DPT-3 shall be used for filing return of deposit or particulars of transaction not considered as deposit or both by every company other than Government company.”.</p> <p>4. In the said rules, in rule 16(A), after sub-rule (2), the following sub-rule shall be inserted, namely:- “(3) Every company other than Government company shall file a onetime return of outstanding receipt of money or loan by a company but not considered as deposits, in terms of clause (c) of sub-rule 1 of rule 2 from the 01st April, 2014 to the date of publication of this notification in the Official Gazette, as specified in Form DPT-3 within ninety days from the date of said publication of this notification along with fee as provided in the Companies (Registration Offices and Fees) Rules, 2014.”.</p>
<p>5. MINISTRY OF CORPORATE AFFAIRS S.O. 560(E).—</p>	<p>30th January, 2019</p>	<p><u>Repeal of the Registration of Companies (Sikkim) Act, 1961</u></p> <p>In exercise of the powers conferred by sub-section (3) of section 1 of the Companies Act, 2013, the Central Government hereby appoints the 30th January, 2019 as the date on which the provisions of section 465 of the said Act in so far as they relate to the repeal of the Companies Act, 1956 [that in except in so far as they relate to the repeal of the Registration of Companies (Sikkim) Act, 1961 (Sikkim Act 8 of 1961)] shall come into force.</p>

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

- NCLAT set aside NCLT order and held that where there is failure to send notice of general meetings or where short notice of meeting is sent are oppressive then all the decisions taken at such meeting is held invalid and not binding on the appellants. Hence the shares are restored to its earlier shareholders and directors removed are restored to directorship.

Belfin Spa & Ors. Vs. Cima Shyam springs P. Ltd. And ors.
MANU/NL/0104/2018

- NCLT held that where ROC failed to comply with the procedure prior to strike off the name of the company and failed to prove that it has served notice to the company before striking off its name, then such order of strike off is held to be illegal for want of service of notice u/s 248(1) of Companies Act,2013. Hence, the order of roc is set aside and name of the company is to be restored.

Nirbhay Buildcon (P.) Ltd. V. ROC MANU/ND/4384/2018

- NCLAT rejected appeal filed by appellant company for restoration of the name of the Company u/s 252 of the Companies Act, 2013 on the ground that it is the duty of directors of the company to file balance sheet and annual return of the company. It held that accidental omission can occur once or twice but when the non compliance relates to many years, it cannot be claimed that there was accidental omission on the part of the Company or its directors.

NU age resources and placements pvt. Ltd. Vs. ROC
MANU/NL/0066/2019

- NCLAT held that where NCLT granted withdrawal of a company petition for relief from oppression and mismanagement when parties settle the matter between them. Any person who was not a party to the suit, being an intervener, has no right to be heard or raise any objection.

**VLS finance limited Vs. Southend Infrastructure Pvt. Ltd & Ors.
MANU/NL/0220/2018**

- High Court Sanctioned a scheme filed u/s 391 of Companies Act,1956 and held that where preference shareholders at the time of redemption of their shares wishes to convert the redemption proceeds into Loan then such form of redemption of preference shares shall be called as deemed redemption.

PSI Data Systems Ltd. Vs. ROC MANU/KE/0434/2000

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

- High Court held that where there are allegations of fraud and misappropriation on the part of the exdirectors of the Company against which the liquidation order has been passed. There is no ground made out to transfer the petition before NCLT and dismissed the application filed by the applicant who has also moved an application u/s 7 of IBC before NCLT.

**RAJNI ANAND VS. COSMIC STRUCTURES LTD
MANU/DE/3831/2018**

- NCLAT set aside NCLT order and quash its order of initiation of insolvency process on the ground that there is pre-existence dispute related to quality of goods prior to the issuance of the demand notice u/s 8(1) of IBC. It held that the application u/s 9 of IBC filed by respondent was not maintainable.

**D. Srinivasulu and ors. Vs. Dr. Reddy's lab. Ltd.
MANU/NL/0011/2019**

- Hon'ble Supreme Court held that the decree holder bank can execute the decree first against the guarantor without proceeding against the 'principal borrower'. Guarantor's liability is co-extensive with that of the principal debtor under section 128 of the 'Contract Act,1872'.

**State Bank of India Vs. Indexport Registered & Ors.
MANU/SC/0328/1992**

- NCLAT set aside NCLT order dismissing application u/s 9 of IBC on mere ground that the demand notice u/s 8 of IBC is to be served on the registered office of the corporate debtor and not on Corporate Office. It held that if the demand notice is served on the corporate debtor either on its registered office or its corporate office, it should be treated as a valid service of notice u/s 8. Hence, application is maintainable under the code.

**Alloysmin Industries vs. Raman Casting Pvt. Ltd.
MANU/NL/0017/2019**

- NCLAT held that without initiating insolvency against the principal borrower, a lender can initiate insolvency against the Guarantor under the provisions of IBC,2016.**Ferro alloys corporation ltd. LSI-16-NCLAT-2019(NDEL)**

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

CBDT Issues Circular To Clarify Law On S. 56(2)(viiia) But Withdraws It Immediately

The CBDT issued Circular No. 10/2018 dated 31.12.2018 in which it clarified that section 56(2)(viiia) is an anti-abuse provision which applies only to the transfer of shares for no or inadequate consideration and not to a fresh issuance of shares. However, by Circular No. 02/2019 dated 4th January 2019, the CBDT has withdrawn the aforesaid Circular on the ground inter alia that the issue is "sub judice"

CBDT Chief Announces Eight Strategies To Enhance Recovery Of Taxes

Hon'ble Sushil Chandra, the Chairman of the CBDT, has addressed a communique dated 4th January 2019 to the Principal CsIT in which he has pointed that the growth in collection of taxes is "extremely low" and that this is a matter of serious concern. The learned Chairman has formulated eight clear-cut strategies and directed that concerted efforts have to be made to drive up recovery from arrear and current demand.

CBDT Notifies New Procedure & Format For TDS Certificates & PAN

The CBDT has vide Notifications Nos 07 of 2018 dated 27th December 2018 and 08 of 2018 dated 31st December 2018 specified the procedure, format and standards for filing an application for grant of certificate of TDS at lower rate and also for issue of PAN

CBDT Circular Reg Implications U/s 56(2)(viiia) For Issue Of Shares

The CBDT has issued Circular No. 03/2019 dated 11th January, 2019 on the applicability of section 56(2)(viiia) of the Income-tax Act, 1961 or similar provisions under section 56(2) of the Income-tax Act, 1961 for issue of shares by a company

CBDT Circular regarding deduction of tax at salaries

CBDT has issued a circular 1/2019 providing for law relating to deduction of tax at salaries for the F.Y. 2018-19.
Later on corrigendum issued dated 18.01.2019 issued specifying standard deduction at Rs. 40000.

DOMESTICE CASE LAWS

Granite Gate Properties (P.) Ltd. vs PCIT, 102 taxmann.com 236 (Delhi)

Where Assessing Officer disallowed assessee's claim for deduction of expenditure during year and also imposed penalty under section 271(1)(c) upon it, since expenses as claimed by assessee were otherwise eligible and allowed in next assessment year and all details relating to these expenses were disclosed by assessee, imposition of penalty was to be set aside.

PCIT vs Macquarie Global Services (P.) Ltd, 102 taxmann.com 272 (Delhi)

HC allowed sec. 10AA relief as new unit set-up by assessee wasn't formed by splitting-up existing business.

Renuka (Sengupta) Malaker vs office of the Appropriate auhtoirty, 102 taxmann.com 237 (Delhi)

Where assessee wanted to purchase a premises acquired by Central Government under section 269UD(1) and, for said purpose she challenged validity of Instruction, dated 19-7-1993, which prohibited department from entering into direct negotiations with any individual for disposal of property acquired by it, in view of fact that High Court had already given a clarification that in case said property was put to auction, it would be open for assessee to participate in same, no further relief could be granted and, therefore, instant petition seeking direction to department for immediate auction of property, being an abuse of process of Court, deserved to be dismissed

ACIT vs Grant Thornton, 102 taxmann.com 269 (Delhi - Trib.)

Income derived by an individual or a partnership firm by rendering professional services is taxable in country of its residence.

E-Governance Society vs CIT(Exemption) 102 taxmann.com 222 (Himachal Pradesh)

Where assessee sent documents to counsel to file appeal, but counsel had taken no steps, delay in filing appeal was to be condoned though there was some negligence on part of assessee in following up matter.

INTERNATIONAL TAXATION

Piaggio & C.S.P.A vs DIT, 102 taxmann.com 135 (Pune - Trib.)

Rate of tax on Royalty on three wheelers received by assessee an Italy based company from is Indian AE, pursuant to agreement between assessee and its AE in India, effective from 01-04-2008, being covered by sub-clause (AA) of section 115A(1)(b), is 10.5 per cent.

**DCIT vs PGS Geophysical AS, Circle 2(2)(2), International Taxation, New Delhi
102 taxmann.com 170 (Delhi - Trib.)**

In order to claim applicability of section 44BB, vessels given on hire by assessee are required to be shown to be fitted with necessary

equipments, and having technical capacity for use in prospecting for, or extraction or production of mineral oils.

HSBC Bank (Mauritius) Ltd vs DCIT, 101 taxmann.com 206 (Bombay)

Where Assessing Officer, during assessment had accepted claim of assessee that it was entitled to benefit of India Mauritius DTAA, assessment could not have been reopened on ground that assessee did not carry out bona fide banking activities in Mauritius.

GE Nuovo Pignone SPA VS dcit, 101 taxmann.com 402 (Delhi - Trib.)

Where on basis of materials gathered, during survey at India Liason Office of non-resident assessee, it was evident that assessee had a PE in India and it had failed to disclose revenue received from sales made to Indian customers through its Indian Office, income having escaped assessment, reassessment proceedings were justified

Where in case of assessee non-resident, business was mainly carried out from Indian Liason Office GEIOC which was not merely preparatory or auxiliary in nature, it was to be held that GEIOC constituted fixed place PE for assessee

Where PE of assessee an Italy based company in India, conducted core activities and extent of activities by assessee in making sales in India was roughly one fourth of total marketing effort, 26 per cent of total profit in India would be attributable to operations carried out by PE in India

TRANSER PRICING

CLSA India (P.) Ltd VS DCIT, 101 taxmann.com 388 (Mumbai - Trib.)

Ad hoc determination of arm's length price by TPO de hors section 92C(1) would not be sustainable.

Pepsico India Holdings (P.) Ltd. vs DCIT, 102 taxmann.com 144 (Delhi - Trib.)

There being no arrangement or agreement with AE at any point of time that assessee was required to spend on AMP or it had been done at behest of AE, spending of AMP expenditure by assessee could not be held to be an international transaction between assessee and its AE

and accordingly AMP adjustment made by TPO/Assessing Officer would not be sustainable.

B.G. India Energy Solutions (P.) Ltd vs DCIT, 101 taxmann.com 360 (Delhi - Trib.)

Where TPO determined ALP of amount paid by assessee as management services unit charges to its AE at nil on ground that those services were duplicative in nature, in view of fact that payment of said charges was distinct and, huge sales volume could not be achieved by assessee without aid of support staff provided by AE, impugned order passed by TPO was to be set aside.

Sunquest Information Systems India (P.) Ltd vs DCIT, 101 taxmann.com 315 (Bangalore - Trib.)

In case of assessee rendering software development services to AE, companies having less than 15 per cent of related party transactions were to included as comparables

Giving a credit period was an integral part of transaction of rendering of software development services by assessee to its AE and, therefore, there could be no separate determination of ALP of international transaction of realization of sale proceeds with extended credit period as it was only incidental to transaction of Sale.

IL&FS Transportation Networks Ltd vs Additional CIT, 102 taxmann.com 137 (Mumbai - Trib.)

Where ALP of interest charged on amounts advanced by assessee to its AEs had been benchmarked by assessee as per LIBOR and EURIBOR rates, same could not have been determined as per Indian rate as had been done by Assessing Officer/TPO.

COMPLIANCE CALENDER DURING THE MONTH OF FEBRUARY 2019

S.no	Obligation	Act	Application Form	Event date
1	7th February 2019	Income Tax	Form No. 27C (TCS)	Monthly filing of forms as received in January 2019
2	7th February 2019	Income Tax	Challan No. ITNS-281	Monthly payment of TDS/TCS deducted/collected in January 2019

3	10th February 2019	GST	GSTR -7	Monthly TDS Return for January 2019
4	10th February 2019	GST	GSTR -8	Monthly TDS Return for January 2019
5	11th February 2019	GST	GSTR -1	Monthly Return of Outward Suppliers where annual turnover is exceeding 1.5 crore for January 2019
6	13th February 2019	GST	GSTR -6	Monthly ISD return for January 2019
7	14th February 2019	Income Tax	Form No. 16 B	Monthly issue of TDS Certificate - Section 194-IA for December 2018
8	14th February 2019	Income Tax	Form No. 16 C	Monthly issue of TDS Certificate - Section 194-IB for December 2018
9	15th February 2019	Providend Fund	Electronic Challan cum Return (ECR)	Monthly E-Payment for PF for January 2019
10	15th February 2019	Income Tax	Form 16 A	Quarterly Issue TDS Certificate for December 2018
11	15th February 2019	ESI	ESI Challan	Monthly payment of ESI for January 2019
12	20th February 2019	GST	GSTR - 3B	Monthly payment of GST for January 2019
13	20th February 2019	GST	GSTR - 5	Monthly return for Non resident for January 2019
14	20th February 2019	GST	GSTR - 5A	Monthly return for OIDAR services to unregistered recipients for

				January 2019
15	28th February 2019	Income Tax	Form No. 26QC	Monthly filing challan-cum-statement for TDS Section 194-IB for January 2019
16	28th February 2019	Income Tax	Form No. 26QB	Monthly filing challan-cum-statement for TDS - Section 194-IA for January 2019
17	28th February 2019	Income Tax	Form No. 26QB	Monthly Payment of TDS for Purchase of Property for January 2019

BY: PRADEEP K. MITTAL

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All reasonable care has been exercised in compilation of information in this report. However, the PKMG Law Chambers, its members on panel(s) or advisors or employees shall not in any way be responsible for the consequences of any action taken on the basis of reliance upon the contents.

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