

# **PKMG** LAW CHAMBERS

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**MONTHLY LAW REPORT FOR JANUARY, 2019**

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## REGULATORY UPDATES (Notifications/Circulars)

Notification&Circular No.	Date of issue	Subject
<p><b>1. MINISTRY OF CORPORATE AFFAIRS</b></p> <p><b>NOTIFICATION – S.O.6225(E).</b></p>	<p><b>18.12.2018</b></p>	<p><b>The Central Government delegates its power of approving Conversion of companies under section 14 of the Company Act 2013 to the Regional Directors.</b></p> <p>In exercise of the powers conferred by section 458 of the Companies Act, 2013, the Central Government hereby delegates to the Regional Directors at Mumbai, Kolkata, Chennai, New Delhi, Ahmedabad, Hyderabad and Shillong, the powers and functions vested in it under the first proviso to clause (41) of section 2 and second proviso to sub-section (1) of section 14 of the said Act, subject to the condition that the Central Government may revoke such delegation of powers or may itself exercise the powers under the said sub-section, if in its opinion such a course of action is necessary in the public interest.</p> <p>This notification shall come into force with effect from the date of its publication in the Official Gazette.</p>
<p><b>2. MINISTRY OF CORPORATE AFFAIRS</b></p> <p><b>NOTIFICATION – G.S.R. 1218(E).—</b></p>	<p><b>18.12.2018</b></p>	<p><b>Amendment in the Companies (Registration of Charges) Rules, 2014</b></p> <p>In exercise of the powers conferred by 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 of Charges) Rules, 2014, namely:—</p>

		<p>1. (1) These rules may be called the Companies (Registration of Charges) Second Amendment Rules, 2018.</p> <p>(2) They shall come into force from the date of their publication in the Official Gazette.</p> <p>2. In the Companies (Registration of Charges) Rules, 2014, for 'Form No.CHG-4', another form is Substituted. <i>(Stakeholders are hereby advised to check the updated version of the said form)</i></p>
<p><b>3. MINISTRY OF CORPORATE AFFAIRS NOTIFICATION- G.S.R.1219(E)</b></p>	<p><b>18.12.2018</b></p>	<p><b>Amendment in the Companies (Incorporation) Rules, 2014</b> In exercise of the powers conferred by clause (41) of section 2, section 3, sub-section (1) of section 7, section 10A, section 14 and 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 (Incorporation) Rules, 2014,namely: -</p> <p>1. (1) These rules may be called the <b>Companies (Incorporation)Fourth Amendment Rules, 2018.</b></p> <p>(2) They shall come into force on the date of their publication in the official Gazette.</p> <p>2. In the Companies (Incorporation) Rules, 2014 (hereinafter referred to as the said rules), after rule 23, the following rule shall be inserted, namely:-</p> <p><b>“23A. Declaration at the time of commencement of business.-</b>The declaration under section 10A by a</p>

director shall be in **Form No.INC-20A** and shall be filed as provided in the Companies (Registration Offices and Fees) Rules, 2014 and the contents of the said form shall be verified by a Company Secretary or a Chartered Accountant or a Cost Accountant, in practice:

Provided that in the case of a company pursuing objects requiring registration or approval from any sectoral regulators such as the Reserve Bank of India, Securities and Exchange Board of India, etc., the registration or approval, as the case may be from such regulator shall also be obtained and attached with the declaration.”.

**3.** In the said rules, after rule 39, the following rules shall be inserted, namely:-

**“40.Application under sub-section (41) of section 2 for change in financial year**

(1) The application for approval of concerned Regional Director under sub-section (41) of section 2 , shall be filed in **e-Form No.RD-1** along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 and shall be accompanied by the following documents, namely:-

(a) grounds and reasons for the application;

(b) a copy of the minutes of the board meeting at which the resolution authorising such change was passed, giving details of the number of votes cast in favour and or against the resolution;

(c) Power of Attorney or Memorandum of Appearance, as the case may be;

(d) details of any previous application made within last five years for change in financial year and outcome thereof along with copy of order.

(2) Where the Regional Director on examining the application, referred to in sub-rule (1), finds it necessary to call for further information or finds such application to be defective or incomplete in any respect, he shall give intimation of such information called for or defects or incompleteness, on the last intimated e-mail address of the person or the company, which has filed such application, directing the person or the company to furnish such information, or to rectify defects or incompleteness and to re-submit such application within a period of fifteen days, in e-Form No. **RD-GNL-5**. Provided that a maximum of two re-submissions shall be allowed.

(3) (a) In case where such further information called for has not been provided or the defects or incompleteness has not been rectified to the satisfaction of the Regional Director within the period allowed under sub-rule (2), the Regional Director shall reject the application with reasons within thirty days from the date of filing application or within thirty days from the date of last re-submission made as the case may be.

(b) In case where the application is

found to be in order, Regional Director shall allow and convey the order within thirty days from the date of application or within thirty days from the date of last re-submission, as the case may be.

(c) where no order for approval or re-submission or rejection has been explicitly made by the Regional Director within the stipulated time of thirty days, it shall be deemed that the application stands approved and an approval order shall be automatically issued to the applicant.

(4) The order conveyed by the Regional Director shall be filed by the company with the Registrar in Form No.INC-28 within thirty days from the date of receipt of the order along with fee as provided in the Companies (Registration Offices and Fees) Rules, 2014.

**41. Application under section 14 for conversion of public company into private company.** (1) An application under the second proviso to sub-section (1) of section 14 for the conversion of a public company into a private company, shall, within sixty days from the date of passing of special resolution, be filed with Regional Director in **e-Form No. RD-1** along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 and shall be accompanied by the following documents, namely:-

(a) a draft copy of Memorandum of

		<p>Association and Articles of Association , with proposed alterations including the alterations pursuant to sub-section (68) of section 2;</p> <p>(b) serve, by registered post with acknowledgement due, individual notice on each debenture holder and creditor of the company; and</p> <p>(c) serve, by registered post with acknowledgement due, a notice to the Regional Director and Registrar and to the regulatory body, if the company is regulated under any law for the time being in force.</p> <p>(6) (a) Where no objection has been received from any person in response to the advertisement or notice referred to in sub-rule (5) and the application is complete in all respects, the same may be put up for orders without hearing and the concerned Regional Director shall pass an order approving the application within thirty days from the date of receipt of the application.</p> <p>(b) Where the Regional Director on examining the application finds it necessary to call for further information or finds such application to be defective or incomplete in any respect, he shall within thirty days from the date of receipt of the application, give intimation of such information called for or defects or incompleteness, on the last intimated e-mail address of the person or the company, which has filed such application, directing the person or the company to furnish such information,</p>
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to rectify defects or incompleteness and to re-submit such application within a period of fifteen days in e-Form No. **RD-GNL-5:**

Provided that maximum of two re-submissions shall be allowed.

(c) In cases where such further information called for has not been provided or the defects or incompleteness has not been rectified to the satisfaction of the Regional Director within the period allowed under sub- rule (6), the Regional Director shall reject the application with reasons within thirty days from the date of filing application or within thirty days from the date of last re-submission made, as the case may be.

(d) Where no order for approval or re-submission or rejection has been explicitly made by the Regional Director within the stipulated period of thirty days, it shall be deemed that the application stands approved and an approval order shall be automatically issued to the applicant.

(9) (i) Where an objection has been received or Regional Director on examining the application has specific objection under the provisions of Act, the same shall be recorded in writing and the Regional Director shall hold a hearing or hearings within a period thirty days , as required and direct the company to file an affidavit to record the consensus reached at the hearing, upon executing which, the Regional Director shall pass an order either approving or rejecting the application along with reasons within thirty days



		<p>from the date of hearing, failing which it shall be deemed that application has been approved and approval order shall be automatically issued to the applicant.</p> <p>(ii) In case where no consensus is received for conversion within sixty days of filing the application while hearing or otherwise, the Regional Director shall reject the application within stipulated period of sixty days: Provided that the conversion shall not be allowed if any inquiry, inspection or investigation has been initiated against the company or any prosecution is pending against the company under the Act.</p> <p>(10) On completion of such inquiry, inspection or investigation as a consequence of which no prosecution is envisaged or no prosecution is pending, conversion shall be allowed.</p> <p>(11) The order conveyed by the Regional Director shall be filed by the company with the Registrar in Form No.INC-28 within fifteen days from the date of receipt of approval along with fee as provided in the Companies (Registration Offices and Fees) Rules, 2014.”.</p> <p>4. In the said rules, after Form No.INC-20, - (Stakeholders are hereby advised to check the updated version of the said form)</p>
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**Companies Act, 2013 Case Studies**  
**By Advocate P.K Mittal, +91-9811044365**

- 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**
  
- High court dismissed appeal on the order of the CLB where the proceedings in the petition filed u/s 397 and 398 of the Companies Act,1956 were stayed u/s 10 of CPC on account of the suit also filed by the appellant. It held that where there is an MOU signed between the parties and the acts of the parties were noticed independent of MOU executed, then only the allegations would fall within sec. 397&398 of the Companies Act. If not, then it would be mere breach of MOU. It is the issue of legality and validity of the MOU and not of oppression and mismanagement.  
**Neeru kapoor vs. Blue star infotech pvt. Ltd & Ors. MANU/DE/4616/2018**
  
- High Court dismissed appeal filed by IDBI Ltd. Praying that Govt. of India be restrained from reducing its shareholding in IDBI ltd. Below 51%. It also seeks directions to LIC (respondent 2) not to acquire the controlling stake of 51% in IDBI ltd. It held that the Govt. Being a shareholder in IDBI Ltd. is at liberty to act like any other shareholder. As there is no transfer of Undertaking and LIC not acquiring any undertaking of IDBI Ltd. And also there is no change in the employer and members of IDBI, thus there is nothing falls foul in the transaction in question.

**All India Idbi Officers & Association vs. Union of  
India & ors. MANU/DE/4653/2018**

- NCLAT sets aside appeal filed by appellant Company and upheld the order of NCLT where NCLT ordered for rectification of register of member and held the transfer as illegal. It held that where no proof of arrangement between the parties in transmission of shares is attached and transfer deed has not been provided, further no evidence of consideration paid by the appellant for the shares in question has been laid down, the transfer is said to be illegal and void.

**Vijaya Hospitality & Resorts Ltd. & Ors. Vs. Sibi C.K & ors.  
MANU/NL/0335/2018**

- NCLAT sets aside NCLT order dismissing oppression-mismanagement petition filed u/s 241-242 of Companies Act, 2013 on the grounds of delay in filling the petition for rectification of Register of Members. It held that when the appellant gave sufficient ground for delay in filling the petition,  
**LSI-397-NCLAT-2018(NDEL)**

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

- NCLT held that where the resolution applicant is eligible to submit resolution plan of the Corporate debtor u/s 29 A and the said resolution plan is in compliance u/s 30 and 31 of IBC, 2016 and there is no objection being raised by the operational creditor to a claim finalised by a resolution professional, the resolution plan is liable to be approved by the NCLT.

**STATE BANK OF INDIA VS. ELECTROSTEEL STEELS LTD.  
MANU/ND/0652/2018**

- NCLT held that where the corporate debtor belongs to the tea industry and its activities were confined to tea industries then in order to revive the corporate debtor and to make business activity viable, the prospective resolution applicant must have profound expertise and experience in the tea industry.

**M K SHAH EXPORTS LTD. VS. ASSAM CO. INDIA LTD.  
(2018) 1`47 CLA 153(NCLT)**

- NCLAT set aside NCLT order declaring moratorium against the applicant in petition filed u/s 7 of IBC. It held that financial service provider does not fall within the definition of corporate person as defined u/s 3(7) of IBC, hence the petition is not maintainable against it.

**Randhiraj thakur vs. Jindal saxena financial services  
pvt. Ltd. & ors. MANU/NL/0232/2018**

- NCLAT quashed NCLT order wherein NCLT directed the appellant to register the transfer of shares in petition filed u/s 58 of the Companies Act, 2013. It held that where the mere objective of respondent is malafide in nature and the transfer is refused by the company on the ground that the respondent wants to increase their stake to takeover the management of the company, is sufficient ground for such refusal. Hence the decision of directors on such transfer is held valid and appeal stand allowed.

**Synthite Industries Ltd vs. Plant lipids pvt ltd. & ors.  
MANU/NL/0281/2018**

- 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)**

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

**CBDT Issues Order Reg Online TDS Applications U/s. 197/ 206(9)  
By NRIs And Residents**

The CBDT has issued an Order u/s 119(1) of the Act dated 24.12.2018 on the issue of exception from online filing of application under section 197 and 206C (9) in the cases of NRIs and resident applicants.

**CBDT Circular On Condonation Of Delay In Filing Forms 9A & 10 By  
Charitable Trusts**

The CBDT has issued Circular No. 7 / 2018 dated 20th December 2018 regarding the condonation of delay under section 119(2)(b) of the Income-tax Act, 1961 in filing of Form no. 10 and Form No. 9A by charitable trusts and institutions

**CBDT Directive Reg Audit Of Charitable Trusts Registration  
Process**

The CBDT has issued a directive dated 14th December 2018 requiring the registration process of charitable trusts / institutions to be audited by Internal Audit Party. A detailed 'Procedure of Internal Audit of the Process of Registration of Charitable Trusts' has also been prescribed by the CBDT

**CBDT Busts Bogus Donation Racket U/s 35(1)(ii) | All Donors To  
Be Investigated**

The CBDT has revealed that its sleuths have busted a bogus donation racket under which an unrecognized trust raised substantial donations over the last six years on the basis of a forged certificate while the donors irregularly claimed weighted deduction u/s. 35(1)(ii) of the Act on donations made to the Trust. The CBDT has issued clear-cut instructions that all donors should be investigated and assessment orders should be passed under the monitoring of supervisory authorities.

### **CBDT Directive (No. 2) Reg Exchange Of Information In Time Barring Assessment Cases**

The CBDT has issued a directive dated 12th December, 2018 on the subject of exchange of information from field offices of time barring assessment cases.

### **CBDT Clarification Reg Filing Of Low Tax Appeals By Dept**

The CBDT has issued a letter dated 11th December 2018 by which it has issued an important clarification regarding the filing of low tax effect appeals by the Department as stipulated in Circular No. 3 of 2018 dated 11.07.2018 and letter issued vide No. 279 /Misc.142/2007 - ITJ(Pt) dated 20.08.2018

### **CBDT Directive Reg Assessment Of Fraud Cases (SOP)**

The CBDT has issued Instruction No. 10 dated 6th December 2018 by which it has specified the Standard Operating Procedure (SOP) that has to be followed by Assessing Officers when dealing with ITR Processing or Assessment in suspected Fraud cases

### **CBDT Directive Reg Dept Appeals In High Courts**

The CBDT has issued a directive dated 7th December 2018 in which it has issued important directives regarding non-removal/delay in removal of defects of pending appeals before Hon'ble High Courts. It is made clear that the PCIT/CIT is personally responsible to ensure proper filing of appeals in High Courts & consequential follow up action. They have been warned that any lapse in this regard will be viewed seriously

### **CBDT Notification Reg TDS Deduction U/s 194A In Case Of Senior Citizens**

The CBDT has issued Notification No. 06/2018 dated 06th December, 2018 by which important clarification has been provided on the issue of TDS deduction under section 194A of the Income-tax Act, 1961 in case of Senior Citizens

### **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

## **CASE LAWS**

### **DOMESTIC CASE LAWS**

#### **PCIT vs Dilip Ranjrekar, 101 taxmann.com 114 (Karnataka)**

Where AO rejected assessee's claim for deduction under sec. 54 on ground that construction of new property was not completed within a period of three years as prescribed in section 54, in view of fact that delay was beyond control of assessee because construction was put up by builder, impugned order passed by Tribunal allowing assessee's claim was to be upheld Accumulated balance lying in provident fund of assessee upto retirement is eligible for exemption under section 10(12)

#### **Ms. Priyananki Singh Sood vs ACIT, 101 taxmann.com 45 (Delhi - Trib.)**

Where assessee intended to let out property and took appropriate efforts in letting property, however, due to fall in property prices failed to let out same year after year because of which property remained vacant, assessee was entitled to claim benefit under section 23(1)(c)

#### **Smt. Renuka Philip vs ITO, 101 taxmann.com 119 (Madras)**

Where assessee sold a property and invested sale consideration from same for purchase of another property and claimed exemption under section 54, however, Assessing Officer allowed exemption under section 54F instead of section 54, and, assessee filed an appeal against said order, since larger issue was pending before Commissioner (Appeals), Commissioner could not invoke jurisdiction under section 263 against said order of Assessing Officer on account of statutory bar.

#### **Tristar Container Services Asia (P.) Ltd. vs ACIT, 101 taxmann.com 47 (Madras)**

in terms of Accounting Standard 19 issued in year 2001, question as to whether a lease is a finance lease or an operating lease depends on substance of transaction rather than its form.

#### **Kumar Pappu Singh vs DCIT, 101 taxmann.com 122 (Visakhapatnam - Trib.)**



Share allotment under 'rights issue' not taxable u/s. 56(2)(vii)(c) if shareholders were relatives.

## **INTERNATIONAL TAXATION**

### **Delmas S.A.S. vs DCIT, 94 taxmann.com 468 (Mumbai - Trib.)**

IHC being part of income derived from operation of ship in international traffic is exempt under article 9 of India-France DTAA; hence, not taxable in India.

### **Sedco Forex International INC vs CIT, 94 taxmann.com 119 (SC)**

Where assessee, foreign company, had entered into contracts with (ONGC) for giving on hire their rigs for carrying out oil exploration activities in India, mobilisation fee received by assessee was to be included for computation of deemed profits and gains of business, chargeable to tax under section 44BB; Review petition against said decision dismissed.

### **Pride Foramer SAS vs JCIT, 97 taxmann.com 648 (Delhi - Trib.)**

Where assessee a France based company, had permanent place of business in India and was subjected to tax in India, then interest on refund of tax was not covered by article 12 of India-France DTAA Service tax being a statutory liability, cannot form part of gross receipt for purpose of deemed profit u/s.44BB

### **DCIT vs RPS Energy Pty Ltd, 92 taxmann.com 77 (Delhi - Trib.)**

Sections 9, 44BB, 44DA and 115A relating to royalty/FTS operate in different fields; where assessee is imparting services which could be a simple royalty or FTS, then same would be taxed under section 9(1)(vi)/(vii) read with section 115A, but where assessee is imparting any services in relation to exploration of mineral oil then royalties/FTS would be taxable under section 44BB.

### **ITO vs Atos Worldwide India (P.) Ltd, 90 taxmann.com 306 (Mumbai - Trib.)**

Where assessee had made foreign remittances for technical services and Assessing Officer held that assessee should deduct tax on said



remittances as per section 115A, since lower rate was prescribed under provisions of DTAA with France, matter was to be re-adjudicated afresh

### **TRANSFER PRICING**

#### **DCIT vs Glenmark Pharmaceuticals Ltd, 101 taxmann.com 84 (Bombay)**

Arm's length price of corporate guarantee cannot be determined on basis of bank guarantee

#### **Sulzer Pumps India (P.) Ltd vs DCIT, 101 taxmann.com 17 (Mumbai - Trib.)**

Where assessee reimbursed expenses incurred by its AE on providing warranty services, however, TPO determined ALP of said charges at nil on ground that there was no need to incur said expenses, since necessity of incurring expenses is beyond scope of tax authorities, impugned order passed by TPO was to be set aside. Where TPO determined ALP of design pattern charges paid to AE at nil taking a view that assessee had not furnished any valuation certificate nor did it prove that Design Patterns were transferred at its book value by AE, since TPO had doubted assessee's claim on surmises, impugned order passed by TPO was to be set aside. Where TPO disallowed administrative service charges paid by assessee to AE on ground that allocation of expenses was not at arm's length, in interest of natural justice, assessee was to be given one more opportunity to furnish other evidence and, thus, impugned order was to be set aside and, matter was to be remanded back for disposal afresh

#### **PCIT vs PTC Software (I) (P.) Ltd, 101 taxmann.com 117 (Bombay)**

Where assessee was rendering ITES services to AE, a company which outsourced services to be rendered by it and thereby followed a different business model, could not be accepted as comparable. In case of assessee rendering ITES services to AE, a company in whose case extraordinary event of amalgamation took place during relevant year, was not acceptable as comparable. Where assessee was rendering ITES services to AE, a company engaged in providing KPO services, could not be accepted as comparable.

#### **Maersk Global Service Centre India (P.) Ltd vs ACIT, 100 taxmann.com 435 (Mumbai - Trib.)**

Where assessee was rendering ITES services to AE, a company having huge brand value and owning intangibles, could not be accepted as comparable

In case of assessee rendering ITES services to AE, a company which was functionally comparable, could not be excluded from list of comparables merely because it was following a different accounting period

**ACIT vs Blackstone Advisors India (P.) Ltd, 101 taxmann.com 116 (Mumbai - Trib.**

Where assessee was providing investment advisory services to its AE, a company rendering management consultancy services to banks, corporates and Government, etc. being functionally similar, was to be accepted as comparable

In case of assessee rendering investment advisory to AE, a company engaged in merchant banking services, was not acceptable as comparable

Where assessee was providing investment advisory services to AE, a company having four business verticals such as, financial advisory, investment advisory, management and facilitation services and identifying investment opportunities, about which segmental details were not available, could not be accepted as comparable

In case of assessee rendering investment advisory services to AE, a company engaged in business of investment banking, merchant banking, merger and acquisition, private equity syndication, etc., was not acceptable as comparable

## COMPLIANCE CALENDER DURING THE MONTH OF JANUARY 2019

S.no	Obligation	Act	Application Form	Event date
1	Every existing body corporate other than a company governed by the NFRA Rules (Rule 3(1)), shall inform the National Financial Reporting Authority ("NFRA") about details of the auditor(s) as on 13th November 2018.	Companies Act	e-form NFRA-1	30 days from the date of deployment of e-form in the MCA portal
2	Filing of form BEN-2 under the <b>Companies (Significant Beneficial Owners) Rules, 2018</b>	Companies Act	Form BEN-2 (form not yet deployed by the MCA as on date)	30 days from the date of deployment of e-form in the MCA portal
3	PF Payment for December 2018	PF Act	ECR	15-01-2019
4	ESIC Payment for December 2018	ESI Act	ESI Challan	15-01-2019
5	Form GSTR-7 for the month of October 2018	GST	GSTR-7	31-01-2019
6	The due date for furnishing statement by e-commerce companies for the months of October to December 2018.	GST	GSTR-8	31-01-2019

**BY: PRADEEP K. MITTAL**

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