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MONTHLY LAW REPORT FOR APRIL, 2017
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Circulars and Notifications Issued by Ministry Of Corporate Affairs (MCA)

Notification & Circular No.	Date of Issue	Subject
1. Notification No. : SO1182(E) MANU/DCAF/0032/2017	April 13, 2017	<p>Subject: Enforcement date of Section 234 of Companies Act, 2013 -</p> <p>In exercise of the powers conferred by sub-section (3) of section 1 of the Companies Act, 2013 (18 of 2013), the Central Government hereby appoints the 13th day of April, 2017 as the date on which the provisions of section 234 of the said Act shall come into force.</p>
2. Notification No. : GSR355(E) MANU/DCAF/0035/2017	April 12, 2017	<p>Subject: Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2017</p> <p>In exercise of the powers conferred by sub-sections (1), (2) and (4) of section 248 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules to amend the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 , namely:-</p> <p>1. (1) These rules may be called the Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2017.</p> <p>(2) They shall come into force on the date of their publication in the Official Gazette.</p> <p>2. In the Companies (Removal of</p>

		<p>Names of Companies from the Register of Companies) Rules, 2016 (hereinafter referred to as the principal rules), in rule 7, in sub-rule (1), after the proviso, the following proviso shall be inserted, namely:-</p> <p>"Provided further that the publication of notice under clause (iii) of this sub-rule, in respect of cases falling under subsection (1) of section 248 shall be in Form No. STK 5A".</p> <p>3. In the principal rules, after the Form STK-5, the following Form shall be inserted, namely:-</p>
<p>3. Department/Board : PIB MANU/PIBU/0396/2017</p>	<p>April 11, 2017</p>	<p>Subject: CBDT issues PAN and TAN within 1 day to improve Ease of Doing Business</p> <p>In order to improve the Ease of Doing Business for newly incorporated corporates, CBDT has tied up with Ministry Of Corporate Affairs to issue Permanent Account Number (PAN) and Tax Deduction Account Number (TAN) in 1 day.</p> <p>Applicant companies submit a common application form SPICe (INC 32) on MCA portal and once the data of incorporation is sent to CBDT by MCA, the PAN and TAN are issued immediately without any further intervention of the applicant. The Certificate of Incorporation (COI) of newly incorporated companies includes the PAN in addition to the Corporate Identity Number (CIN).</p>


		<p>TAN is also allotted simultaneously and communicated to the Company. Till 31st March 2017, 19,704 newly incorporated Companies were allotted PAN in this manner. During March, 2017, of the 10,894 newly incorporated companies, PAN was allotted within 4 hrs in 95.63% cases and within 1 day in all cases. Similarly, TAN was allotted to all such companies within 4 hrs in 94.7 % cases and within 1 day in 99.73% cases.</p> <p>CBDT's initiative in starting of a business is expected to significantly improve the ranking of India in the Ease of Doing Business Study conducted by World Bank by reducing the number of processes of registration before various authorities under law, reducing the time taken for allotment of the registration number (CIN, PAN, TAN) and making the entire registration process for new companies much simpler.</p> <p>CBDT has also introduced the Electronic PAN Card (E-PAN) which is sent by email, in addition to issue of the physical PAN Card, to all applicants including individuals where PAN is allotted. Applicant would be benefited by having a digitally signed E-PAN card which they can submit as proof of identity to other agency electronically directly or by storing in the Digital Locker</p>
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<p>4. Notification/ Circulars referred : No. S.O. 989(E) dated 27.03.2017 MANU/PIBU/0271/2017</p>	<p>March 30, 2017</p>	<p>(https://digilocker.gov.in).</p> <p>Subject: Ministry of Corporate Affairs issues fresh notifications wherein, the Central Government intends to provide clarity on the applicability of the threshold exemption limits to all forms of combinations</p> <p>The MCA has undertaken a major reform in the regulation of combinations under the Competition Act, bringing India in line with the global practice. The Act which was passed by Parliament in 2002 had initially provided for notice of combinations to be given by enterprises, as per Section 5 of the Act, on a voluntary basis. However, this Section was amended in 2007 making the notice mandatory.</p> <p>In 2011, in response to concerns expressed by various stake holders, the Government had issued a notification exempting an enterprise, whose control, shares, voting rights or assets are being acquired has either assets of the value of not more than Rs. 250 crores in India or turnover of not more than Rs. 750 crores in India from the applicability of Section 5 of the Competition Act, 2002, for a period of 5 years. These limits were enhanced to Rs. 350 crores and Rs. 1000 crores, respectively, in March, 2016.</p>
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		<p>enterprise is being combined with another.</p> <p>With the issue of these notifications, combinations falling within the threshold limits would not require to be filed before the Competition Commission of India. The reform is in pursuance of the Government's objective of promoting Ease of Doing Business in the country and is expected to make India a more attractive destination for Foreign Direct Investment. The notification is expected to enable greater freedom to industry in taking legitimate business decisions towards further accelerating India's economic growth.</p>
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Companies Act, 2013 Case Laws
By Advocate P.K. Mittal, +91-9811044365

 **NCLT dismisses frivolous application abusing process of law as matter already disposed off by CLB - NCLT, Hyderabad dismisses application filed by the parties as matter already disposed off by the erstwhile Company Law Board in November 2006, states that parties cannot be permitted to abuse the process of law by filing frivolous and un-tenable applications; Notes that CLB vide its order appointed Justice Shri P. Ramakrishnam Raju as the Chairman of the Company to carry out directions passed in the order, who post his appointment took necessary action and conducted extra ordinary general meeting of the Company in August 2008; Further notes that the results of the EOGM were declared in January 2009, wherein 5 people were elected as the directors, which led to filing of the current application wherein the votes cast in the said EOGM were disputed; Observes that more than 14 years had lapsed since the filing of the petition in 2002, but still the parties continue to raise frivolous and purely technical issues; On noting that parties filed several civil suits refers to Sec. 430 of the Companies Act, 2013 (which stipulates that no civil court shall have jurisdiction over the matters of the Company affairs: Hyderabad NCLT [LSI-1463-NCLT-2017-(HYD)]**

✚ **NCLT: Auditor's removal sans Central Govt. approval u/s 140 improper; Directs reinstatement-** NCLT, Hyderabad directs reappointment /reinstatement of petitioner (SPC & Associates) in place of Respondent no. 1 (DVAK & Co.) as the statutory auditor of the company; Notes that removal of the petitioner without any plausible reason by Respondent no. 2 (NISC Export Services Pvt. Ltd.) company amounted to grave injury to an established firm with 27 years of experience; Notes that Respondent no.1 was a new firm with just six months of experience and its partners were earlier working with the petitioner firm for a period of 3 years and post quitting, Respondent no.1 started soliciting and poaching its clients; Takes note of the reason for non-ratification/ removal of petitioner's firm i.e. 10% increase in audit fees, cites it as illogical as 10% increase in audit fees was reasonable; Observes that no prior approval of the Central Govt. was obtained before petitioner's removal as prescribed u/s 140 of the Companies Act, 2013 :Hyderabad NCLT [**LSI-1464-NCLT-2017-(HYD)**]

✚ **NCLT approves restructuring aimed at creating sustainable growth -** NCLT Mumbai approves restructuring application u/s 66 read with section 230-232 of the Companies Act, 2013 between applicant (Adonis Electronic Pvt. Ltd.) and its shareholders and creditors for conversion of unsecured debentures into equity shares and subsequent reduction and conversion of specified unsecured creditors into preference shares; Notes that the scheme is pursuant to contractual obligations of the applicant towards its consumers and buyers as it couldn't afford to scale down its operation and support set up; The company being unable to raise finance required for expansion of business from banks and financial institutions raised substantial funds as advance from its main customer (Mirc Electronics Ltd.); Notes that the applicant has also received advance from specified unsecured creditors of Rs. 26.5 crores and has accumulated losses amounted to Rs. 46.28 crores; For the benefit of all stakeholders and for creating strong foundation for sustainable growth allows proposed scheme: Mumbai NCLT [**LSI-1465-NCLT-2017-(MUM)**]

✚ It is held that where the respondents are keeping the holding company in complete darkness in regards to the affairs of the subsidiary company and the directors/nominees of the holding are misusing their position so as to strike off the name of the subsidiary company, the petition of the holding company deserve to be allowed. **Khosla Steel Industries (P) Ltd. and Others v. K Steel (P) Ltd. and Another (2017) 137 CLA 87 (NCLT)**

✚ It is held that where the High Court passed an order granting permission to respondent to withdraw the petition for amendment to the petition with liberty to bring the matter in notice before NCLT, the respondent could bring the plea of

oppression/mismanagement before NCLT after complying necessary approvals, if the order does not affect the interest of the applicant. **Karnataka Theaters Ltd. v. M Ratnavarma Padival and Others (2017) 137 CLA 104 (Kar.)**

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

CBDT Stipulates Guidelines For Waiver Of Interest Charged U/s 201(1A)(i) Of The Income-tax Act, 1961 For TDS Default


The CBDT has issued Circular No. 11/2017 dated 24.03.2017 which encompasses an Order u/s 119(2)(a) of the Income-tax Act, 1961. By the said Circular, the CBDT has stipulated guidelines for waiver of interest charged under section 201(1A)(i) of the Income-tax Act, 1961 for failure / default in deducting TDS under Chapter XVIIB of the Act. The CBDT has specified the class of cases in which the reduction or waiver of interest u/s 201(1A)(i) can be considered.

CBDT Circular Clarifies Important Aspects Of ICDS (FAQs)

The CBDT has issued Circular No. 10 of 2017 dated 23.03.2017 by which it has provided important clarifications on the Income Computation and Disclosure Standards (ICDS) notified under section 145(2) of the Income-tax Act, 1961. The clarifications are in the form of FAQs. There are 25 FAQs dealing with all the important aspects of the ICDS. The Circular is a must read for all taxpayers and professionals

CBDT Chief Directs Speedy Filing Of Prosecution Complaints And Disposal of Compounding Applications


Hon'ble Sushil Chandra, the Chairman of the CBDT, has addressed a letter dated 7th March 2017 to the Principal Chief Commissioners of Income-tax in which he has bluntly observed that the work relating to the filing of prosecution complaints and disposal of compounding applications "*is not upto the mark*". The learned Chairman has opined that prosecution proceedings can be successfully initiated in several cases of entry operators including those concerning bogus LTCG claims, cases rejected by Settlement Commission etc. He has directed the officers to put in their best and expedite filing of prosecution complaints and disposal of compounding applications

 **CBDT clarification on the taxation and investment region for pradhan Mantri Garib Kalyan Yagna, 2016**

CBDT vide circular no 12 of 2017 dated 31.03.2017 has clarified that if an assessee has made payment of tax, surcharge, penalty and deposit under the Scheme, in the banks by the closing hours of 31st March, 2017, he shall be allowed to file declaration in Form No.1 under the Scheme by the 10 th of April, 2017.

 **CBDT issues clarification on ICDS**

CBDT circular no. 10 dated 23.03.2017 has issued FAQ on ICDS.

 **CBDT clarification on the taxation and investment region for pradhan Mantri Garib Kalyan Yagna, 2016**

CBDT vide circular no. 9 dated 14.03.2017 clarified that in case of bank deposit , it is not necessary that there should be bank balance at the time of declaration but in respect of bank, but in respect of cash, there should be a cash balance at the time of declaration under the scheme.

 **CBDT notifies option form for opting for taxation in respect of royalty**

CBDT has introduced form 5G providing an option for taxation in respect of royalty income from patents developed and registered in India vide notification dated 31.03.2017

 **CBDT amended rule 12 providing for changes in ITR for AY.2017-18**

CBDT vide notification dated 30-03-2017 has amended rule 12 providing for changes in income tax return filling forms for A.Y.2017-18.

 **CBDT notifies rule regarding authentication of notice sent through electronic mode**

CBDT notifies rule 127A vide notification dated 23.03.2017 regarding authenticity of notices sent through electronic mode.

 **CBDT specifies procedure of PAN application through Simplified Procedure for Incorporating Company**

CBDT vide notification no. 2 dated 9.03.2017 specifies procedure for PAN application through simplified procedure for incorporating company.

Income Tax Case Laws
By CA Manoj Kumar Mittal, +91-9810764620

CASE LAWS

Domestic Case Laws

[2017] 80 taxmann.com 179 (Bangalore - Trib.)

IT : As per the provisions of section 10(5), only the reimbursement of expenses which were incurred on travel of employees and his family to any place in India subject to certain conditions are exempt. Since the employees of the assessee-Bank had travelled to foreign countries, the benefit of exemption available under section 10(5) should not have been granted. The assessee-Bank may not have been aware of the details of the employees' places or destination of visits at the time of advancement of LTC/LFC amounts. However, at the final settlement of the claims of the employees under LTC/LFC, the assessee-Bank should have obtained all the relevant details such as the places of visits (destinations) etc. When the assessee-Bank was aware of the fact that its employees had visited foreign countries by availing LTC/LFC concession and so he was not entitled for exemption of reimbursement of LTC under section 10(5), the assessee-Bank was under obligation to deduct tax at source treating such an amount as not exempt. Since the assessee-Bank had failed to enforce its duty to deduct tax at source as envisaged in section section 192, the assessee-Bank was an 'assessee in default' under section 201(1)

[2017] 80 taxmann.com 167 (Bombay)

IT : Where petitioner failed to pay 25% of tax payable on undisclosed income declared under Income Declaration Scheme 2016 on or before 30-11-2016 due to demonetization of Rs. 500 and Rs. 1000 currency notes on 08-11-2016 petitioner's plea to direct CIT to accept said tax payable beyond specified date could not be accepted

[2017] 80 taxmann.com 51 (Calcutta)

IT : Where assessee converted the stock-in-trade of shares into investments and sell the same at a later stage, profit arising from sale of shares shall be

deemed to be capital gains and not business income. Since shares were held as long-term capital asset, profit arising from sale of share shall be exempt from tax under section 10(38)

[2017] 80 taxmann.com 6 (Ahmedabad - Trib.)

IT/ILT: No deduction under section 37(1) could be allowed in respect of foreign tax credit for which only partial credit was allowed in the current year.

IT : Where genuineness of commission payments made by assessee developing software products to non-resident agents for procuring business had been established, Commissioner (Appeals) rightly rejected disallowance of commission payments made by Assessing Officer and since commission agents were not chargeable to tax in India, assessee had no obligation to deduct tax at source from such commission payments to non-resident agents

[2017] 80 taxmann.com 2 (Mumbai - Trib.)

IT : HRA exemption claim cannot be allowed u/s. 10(13A) based on sham rent payments supported only by rent receipts from parent where assessee produces no evidence arising in normal course of happening of transaction of hiring premises such as leave and license agreement, letter to society intimating about assessee's tenancy, payment through bank, cash payments backed with known sources, electricity bill payments through cheque, water bill payments through cheque, some correspondence coming during that period of alleged tenancy to prove that transaction of hiring of premises was genuine and was happening during the said period and where assessee's parent files no ITR reflecting rent received from assessee and the rent paid looks excessive for a One BHK flat and assessee claims housing loan repayment deduction u/s. 80C for the flat within 5 minutes walk where she actually stays with her husband and daughter

[2017] 79 taxmann.com 466 (Delhi)

IT : There is no bar for an assessee or declarant to claim credit of advance tax and TDS paid previously relating to assessment years for which it seeks benefit under Income Declaration Scheme, 2016

TRANSFER PRICING CASE LAWS

[2017] 80 taxmann.com 55 (Pune - Trib.)

IT/ILT : In case of assessee, rendering software development services to its AE, a company engaged in developing its own software products, was not acceptable as comparable

IT/ILT : Where a company was mainly rendering software development services, mere fact that only four per cent of its total receipts were from hardware sales, could not be a ground to exclude it from list of comparables

IT/ILT : Where assessee was an off-site developer, a company engaged in on-site development was not acceptable as comparable

IT/ILT : Where assessee was a captive service provider and was being reimbursed on cost plus basis, a loss making concern was to be excluded from its list of comparables.

[2017] 79 taxmann.com 271 (Delhi - Trib.)

IT/ILT: Payment made by assessee to ICC as 'Rights fee' was exclusively for use of Marks of ICC for purposes of promotion and advertisement and not for manufacture and sale of licensed products, hence, not in nature of 'Royalty' or 'Fees for technical services'

IT/ILT: Where though TPO held AMP expenses to be an international transaction, however did not have any occasion to consider ratio laid down in judicial precedents now available for consideration, matter required readjudication.

[2017] 80 taxmann.com 42 (Bangalore - Trib.)

IT/ILT : A company engaged in clinical research and manufacture of other bio products was not a comparable to assessee rendering software development services.

INTERNATIONAL CASE LAWS

[2016] 69 taxmann.com 454 (Pune - Trib.)/[2016] 180 TTJ 544 (Pune - Trib.)

IT/ILT: Where assessee, a non-resident company, had entered into an agreement with its principal in UK and received know-how of designing and

running plants which in turn, it had sub-licensed to Indian company against royalty at 5 per cent of net sales, royalty income having been received by assessee on its own right as beneficial owner of same, such royalty income was to be subjected to tax at concessional tax rate at 10 per cent

IT/ILT: Where interest income was earned by assessee-Singaporean company from Indian company being its beneficial owner and it had been remitted to Singapore though not in instant year, it was taxable at concessional rate of taxes

[2016] 68 taxmann.com 143 (Delhi)

IT/ILT: Payment received for carrying out 2D/3D seismic survey in connection with exploration of oil, would not be in nature of 'fees for technical services' in terms of Explanation 2 to section 9(1)(vii)

[2016] 68 taxmann.com 34 (Mumbai - Trib.)


IT/ILT: In order to determine as to whether assessee, a German company, rendering services in field of exploration, mining and extraction to Indian companies, had PE in India, it was continuous period of stay of its employees in India which had to be taken into consideration and not entire contract period.


Corporate Laws
By Advocate P.K. Mittal, +91-9811044365

- ✚ **Insolvency and Bankruptcy Code, 2016-** The application filed by applicants for triggering insolvency process is liable to be dismissed where the applicants are not covered by the expression “financial creditor”, and the arrears of ‘assured returns’ promised on purchase of property would also not be covered by the expression ‘financial debts’ by breach of agreements to sell. **Nikhil Mehta & Sons (HUF) v. AMR Infrastructure Ltd. [2017] 137 CLA 163 (NCLT)**

- ✚ **CCI approves 85% acquisition of Emerson Network Power Business by Platinum Equity Group** - CCI approves proposed combination relating to acquisition of 85% interest and sole control of Emerson Network Power Business (ENP Business/Target Company) by Cortes NP Acquisition

Corporation and ASCO Power GP, LLC, belonging to Platinum Equity Group ('Platinum/ Acquirer Company'); Notes that target business post acquisition would be engaged in – (i) power and thermal management products and (ii) infrastructure management and solutions; Observes that none of Platinum's portfolio companies had presence in India, also notes that the Acquirer Company did not control any company that had or used products made for specialized applications that Target Company addresses; Thus rules that there was no horizontal overlaps or vertical relationships between Platinum and the Target Company. **[LSI-1410-CCI-2016-(NDEL)]**

 **CCI approves proposed combination by UltraTech of JAL & its subsidiary leading to economic efficiency in cement production** - CCI approves proposed combination by UltraTech of Jaiprakash Associates Ltd. & its subsidiary Jaypee Cement Corporation Ltd. for sale of cement manufactured at cement plant situated in the states of MP, UP, HP, Uttarakhand and AP having a total cement capacity of 21.2 million tonnes per annum; Notes that white and grey cement differed in their physical characteristics and intended uses, thus rules that it constituted separate relevant product markets; However, notes that different varieties of grey cement were largely substitutable and thus market for grey cement amounted to relevant product market; Observes change in HHI was insignificant so as to raise concerns of appreciable adverse effect on competition; Notes that proposed combination was initiated at the instance of JAL's lenders, given its mounting debt and Acquirer intended to increase the capacity utilisation of target assets vide proposed combination; Thus holds that the proposed combination would aid the market in benefiting from "increase in overall economic efficiency in production and increase in overall quantity of cement". **[LSI-1411-CCI-2016-(NDEL)]**

 **CCI approves arrangement scheme of JSWEL, JPVL, BPSL and Jaypee Group Employees Welfare Trust** - CCI approves scheme of arrangement of JSW Energy Ltd., Jaiprakash Power Ventures Ltd., Bina Power Supply Ltd. and Jaypee Group Employees Welfare Trust via Securities Purchase Agreement ('SPA') entangled in power generation, trading and transmission as well as mining equipment manufacturing; Notes that following proposed combination as (i) BPSL (an ongoing concern) would acquire JPVL's 500 MW operational coal fired thermal power plant (ii) thereafter JSWEL would take over 100% stake in the BPSL; Observes horizontal overlap between Acquirer and JPVL as both were engaged in generation of power, however states that many public sector undertakings and private players like National Thermal Power Corporation Ltd., Maharashtra State Power Generation Company Ltd., etc already exist in India;

Opines that combination was not likely to have an appreciable adverse effect on competition in India. **[LSI-1412-CCI-2016-(NDEL)]**

SEBI Notifications and Circulars
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Notification & Circular No.	Date of Issue	Subject
<p style="text-align: center;">1 Circular No. : SEBI/HO/MRD/DRMN P/CIR/P/2017/32 MANU/SSMD/0011/201 7</p>	<p style="text-align: center;">April 18, 2017</p>	<p>Subject: Review of the framework of position limits for Interest Rate Futures contracts-</p> <p>With a view to ease trading requirements in the Interest Rate Futures contracts, it is clarified that the position limit linked to open interest shall be applicable at the time of opening a position. Such positions shall not be required to be unwound immediately by the market participants in the event of a drop of total open interest in Interest Rate Futures contracts within the respective maturity bucket.</p> <p>2. However, in the aforementioned scenario, such market participants shall not be allowed to increase their existing positions or create new positions in the Interest Rate Futures contracts of the respective maturity bucket till they comply with the applicable position limits.</p> <p>3. Notwithstanding the above, in view of risk management or surveillance concerns with regard to the positions of such market participants, stock exchanges may direct them to bring down their positions to comply with the applicable position limits within the time period prescribed by the stock exchanges.</p> <p>4. Stock exchanges and clearing corporations are directed to:</p>

		<p>a) take necessary steps to put in place systems for implementation of the circular, including necessary amendments to the relevant bye-laws, rules and regulations;</p> <p>b) bring the provisions of this circular to the notice of their members and also disseminate the same on their websites; and</p> <p>c) communicate to SEBI, the status of implementation of the provisions of this circular in the Monthly Report.</p> <p>5. This circular is being issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market.</p>
<p>Circular No. : SEBI/HO/MRD/DR MNP/CIR/P/2017/3 1 MANU/SDER/0002/201 7</p>	<p>April 13, 2017</p>	<p>Subject: Inclusion of "Derivatives on Equity shares" - IFSC</p> <p>Securities and Exchange Board of India (International Financial Services Centres) Guidelines, 2015 were notified by SEBI on March 27, 2015, which came into force on April 01, 2015.</p> <p>2. Clause 7 of SEBI (IFSC) Guidelines, 2015 specifies the types of securities in which dealing may be permitted by stock exchanges operating in IFSC. Based on the recommendations of the Risk Management Review Committee of SEBI, it has been decided to specify "Derivatives on equity shares of a company incorporated in India" (hereinafter referred to as 'Derivatives on equity shares') as permissible security under sub-clause (vi) of Clause 7 of SEBI (IFSC) Guidelines, 2015. Accordingly, the recognized stock exchanges operating in IFSC may permit dealing in 'Derivatives on equity shares', subject to prior approval of SEBI.</p>

		<p>3. SEBI registered Foreign Portfolio Investors (FPIs), operating in IFSC, in terms of SEBI Circular IMD/HO/FPIC/CIR/P/2017/003 dated <u>January 04, 2017</u>, and eligible entities which are incorporated and operating in IFSC shall be eligible to trade in 'derivatives on equity shares'.</p> <p>4. The applicable position limits for eligible participants shall be as stipulated vide SEBI circulars SMDRP/DC/CIR-10/01 dated <u>November 02, 2001</u>, DNP/Cir-30-2006 dated <u>January 20, 2006</u> and SEBI/HO/MRD/DP/CIR/P/2016/143 dated December 27, 2016.</p> <p>5. The Market Wide Position Limit (MWPL) for 'derivatives on equity shares' shall be equal to ten percent of the number of shares held by non-promoters in the relevant underlying security (i.e. free-float holding). Further, the MWPL for 'derivatives on equity shares' in recognized stock exchanges in IFSC shall be reckoned separately from that in recognized stock exchanges in domestic market and the MWPL (in value terms), in no circumstances, shall exceed the fifty percent of the MWPL (in value terms) in recognized stock exchanges in domestic market.</p> <p>6. This circular is being issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.</p>
<p>Circular No. : SEBI/HO/MRD/DP/CI R/P/2017/29 MANU/SDEP/0002/201</p>	<p>April 3, 2017</p>	<p>Subject: Capacity Planning Framework for the Depositories</p> <p>1. The capacity planning framework of the Stock Exchanges and Clearing Corporations was reviewed by</p>

Technical Advisory Committee (TAC) of **SEBI**. Based on recommendations of the committee, circular no. CIR/MRD/DP/17/2015 dated October 08, 2015 was issued to the Stock Exchanges and Clearing Corporations with regard to their capacity planning.

2. Depositories have been identified as financial Market Infrastructure Institutions which facilitate and perform systemically critical functions in the securities market. In view of their importance in the smooth functioning of the securities market, the framework for capacity planning of the Depositories was also discussed in TAC. Based on recommendations of the committee, it has been decided to put in place following requirements for Depositories while planning capacities for their operations:

2.1. The installed capacity shall be at least 1.5 times (1.5x) of the projected peak load.

2.2. The projected peak load shall be calculated for the next 60 days based on the per hour peak load trend of the past 180 days.

2.3. The Depositories shall ensure that the utilisation of resources in such a manner so as to achieve work completion in 70% of the allocated time.

2.4. All systems pertaining to Depository operations shall be considered in this process including

all technical components such as network, hardware, software, etc., and shall be adequately sized to meet the capacity requirements.

2.5. In case the actual capacity utilisation exceeds 75% of the installed capacity for a period of 15 days on a rolling basis, immediate action shall be taken to enhance the capacity.

2.6. The actual capacity utilisation shall be monitored especially during the period of the day in which pay-in and pay-out of securities takes place for meeting settlement obligations.

3. Depositories shall implement suitable mechanisms, including generation of appropriate alerts, to monitor capacity utilisation on a real-time basis and shall proactively address issues pertaining to their capacity needs.

4. Depositories are directed to:

4.1. take necessary steps and put in place necessary systems for implementation of the circular, including necessary amendments to the relevant bye-laws, rules and regulations, within three months from the date of this circular.

4.2. bring the provisions of this circular to the notice of the depository participants and also disseminate the same on its website; and

4.3. communicate to SEBI the status of implementation of the provisions of this circular.

		<p>5. This circular is being issued in exercise of the powers conferred by Section 11 (1) of Securities and Exchange Board of India Act, 1992 and Section 19 of the Depositories Act, 1996 to protect the interest of investors in securities and to promote the development of, and to regulate the securities market.</p>
<p>2. Circular No. : SEBI/HO/MRD/DSA/C IR/P/2017/27 .MANU/SSMD/0010/201 7</p>	<p>March 27, 2017</p>	<p>Subject : Exclusively listed companies of De-recognized/Non-operational/Exited Stock Exchanges placed on the Dissemination Board-</p> <p>1.SEBI vide circular dated October 10, 2016 provided a period of three months to the Exclusively Listed Companies (ELC5) on the Dissemination Board (DB) to submit an action plan to list or to provide exit to shareholders to the designated stock exchanges.</p> <p>2.Further, SEBI vide circular dated January 05, 2017 extended the time to submit plan of action till March 31, 2017.</p> <p>3.SEBI has been receiving representations seeking clarifications on raising of further capital and the process of exit of ELC5 from the DB. Therefore, in the interest of the investors of such ELC5, it is decided to extend the time to submit the plan of action till June 30, 2017. All other conditions as mentioned in the SEBI circular dated October 10, 2016 remain unchanged.</p> <p>4.This circular is issued in exercise of powers conferred under Section 11 (1) and 11(2) (j) of the Securities and Exchange Board of India Act, 1992, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market. This circular is</p>

		available on SEBI website.
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SEBI Laws

By Advocate P.K. Mittal, +91-9811044365

- ✚ SEBI cautions public against dealing with the properties of PACL Ltd. -**
SEBI cautions the public against buying/dealing with any properties wherein PACL Ltd. or any of its associates/subsidiaries have any interest/rights directly/indirectly; Pursuant to SC order in the matter of PACL Ltd. vs. SEBI, a Committee under the chairmanship of Justice (Retd.) R.M. Lodha, Former Chief Justice Of India was constituted to dispose off the properties of Company for paying the proceeds to its investors; Reiterates that only the Committee is authorized to sell the properties of the Company; Notes that the Committee received complaints stating that certain individuals/associations are collecting money/cheques from individual misrepresenting authorisation from the Committee thus clarifies that “the Committee has not authorised any person to collect any money/cheque in any manner whatsoever”: SEBI **LSI**
- ✚ SAT levies penalty for failure to obtain SCORES authentication; Company's size irrelevant -** SAT upholds SEBI’s (Respondent) order, holds that the delay of more than 8 months in obtaining SCORES authentication by Chaman Exports Ltd. (Appellant) was not justifiable; Appellant, a company listed on Calcutta and UP Stock Exchange claimed that it was aggrieved by the order passed by SEBI Adjudicating Officer for failure to obtain SEBI Complaint Redressal System (SCORES) authentication by a specified date; Takes note of Appellant’s contention that on receipt of SEBI’s letter it wrongly took SCORES registration instead of SCORES authentication; Holds that irrespective of the size of the company a listed company is obliged to perform certain tasks by law; Thus levies penalty of Rs. 1.5 lakhs on the Appellant **[LSI-1491-SAT-2017-(MUM)]**
- ✚ SEBI grants exemption to Proposed Acquirer from making open offer under Takeover Regulations -** SEBI allows Proposed Acquirer’s (Shantilal Savla Family Trust, a private trust) application seeking exemption from making an open offer

under Regulation 3 and 4 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ('the Takeover Regulations') in respect to proposed acquisition and control of the shareholding and voting rights of Deep Industries Ltd. ("Target Company"); Notes that the Proposed Acquirer was a private family trust created for the benefit of Shantilal Savla family and the ultimate beneficiaries of the Trust were the promoters and members of the Promoter Group of the Target Company; Further notes that the acquisition was intended to streamline the succession and to promote welfare of the promoter family with no change in the public shareholding of the Target Company; Clarifies that the "exemption granted is limited to the requirements of making open offer under the Takeover Regulations and shall not be construed as exemption from the disclosure requirements under Chapter V of the Takeover Regulations, the compliance with the SEBI (Prohibition of Insider Trading) Regulations, 2015, the Listing Agreement/SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 or any other applicable Acts, Rules and Regulations" [LSI-1492- SEBI-2017-(MUM)]

Civil Laws

By Advocate Praveen K Mittal, +91-9810826436

- ✚ **HC restrains Club & Lounge from playing songs & violating Performers' Right to Receive Royalties** - Delhi HC grants ex parte permanent injunction, in a suit filed by the Indian Singers Rights Association(Plaintiff), restraining Night Fever Club & Lounge(Defendant) from using the Plaintiff society's repertoire of songs without obtaining a licence or infringing the Plaintiff's member's Performers' rights and from violating the "Right to Receive Royalties" of the Plaintiff's members; Notes that the Plaintiff has been able to prove infringement of Plaintiff's members' right to receive royalties; States that the playing of songs by the Defendant in its Lounge without payment of royalty to the Plaintiff, is violation of Performers' right to receive royalty; Holds that not only the Defendant is restrained from using the Plaintiff's members' songs but also directs the Defendant to render the account of all the monies earned from using the songs comprising the performance of the Plaintiff's members; Declines Plaintiff prayer for damages in light of absence of substantive evidence; Reserves the right of the Plaintiff to institute a separate proceedings for damages after rendition of accounts by the Defendant and thus, decrees the suit. [LSI-1500-HC-2016-(DEL)]

✚ **HC restrains Ex-employee from breaching Non-Competition & Non-Disclosure Agreement; Grants ex parte permanent injunction** – Madras HC grants ex-parte permanent injunction, in a suit filed by Real Image Media Technologies Pvt. Ltd.(Plaintiff), restraining R. Karthikeyan ('Defendant') from infringing the copyright of the Plaintiff over the "QUBE" software and also from breaching the "Employee Non-Competition, Non-Disclosure and Proprietary Information Agreement" entered into between the Plaintiff company and the Defendant; Observes that the Defendant, under the pretext of employment, has gained knowledge with regard to Source Code of Plaintiff's "QUBE" software and left the office and joined with the Plaintiff's competitor; Notes that as per Non-Competition, Non-Disclosure and Proprietary Information Agreement, the Defendant not only agrees to maintain confidential information with regard to the trade secrets & intellectual property but also agrees to not to pursue any business opportunity or take any position with any organization without Plaintiff's prior written approval; Observes that the Plaintiff company's business is based on the Intellectual Property Rights and Software specifically designed for that and utmost confidence is required to sustain such business, particularly, when there are healthy competitors available for the said business; States that the Defendant cannot use the knowledge, which was derived from the Plaintiff company's business, to the other competitor; Concludes that the Plaintiff is entitled for injunction as there is every likelihood of sharing the secret information of the plaintiff company's business to the other competitor; Holds that the Plaintiff has established its case and thus, decrees the suit. [**LSI-1499-HC-2017-(MAD)**]

✚ The "sufficient cause" for non-appearance refers to the date on which the absence was made a ground for proceeding ex parte and cannot be stretched to rely upon other circumstances anterior in time. If "sufficient cause" is made out for non-appearance of the defendant on the date fixed for hearing when ex parte proceedings were initiated against him, he cannot be penalised for his previous negligence which had been overlooked and thereby condoned earlier. In a case where the defendant approaches the court immediately and within the statutory time specified, the discretion is normally exercised in his favour, provided the absence was not mala fide or intentional. For the absence of a party in the case the other side can be compensated by adequate costs and the lis decided on merits." **J.H. Industrial Corporation Vs. Vijendra Kumar Goel MANU/WB/0253/2017**

✚ In a dispute concerning a consumer, it is necessary for the courts to take a pragmatic view of the rights of the consumer principally since it is the consumer who is placed at a disadvantage vis-a-vis the supplier of services or goods. It is

to overcome this disadvantage that a beneficent legislation in the form of the Consumer Protection Act, 1986 was enacted by Parliament. The provision of limitation in the Act cannot be strictly construed to disadvantage a consumer in a case where a supplier of goods or services itself is instrumental in causing a delay in the settlement of the consumer's claim. That being so, we have no hesitation in coming to the conclusion that the National Commission was quite right in rejecting the contention of National Insurance in this regard. The Insurance Company failed to provide any reason before the National Commission or even before us to remotely suggest that the second report was also tainted either because the officer consulted was not authorised to give a report or for any other justifiable reason. The view taken by the National Commission was not only based on the evidence on record, but is in any event a possible view. **National Insurance Co. Ltd. Vs. Hindustan Safety Glass Works Ltd. and Ors. MANU/SC/0390/2017**

Arbitration Laws By Advocate Praveen K Mittal, +91-9810826436

- ✚ Place of Arbitration determines the law that will apply to the arbitration and related matters like challenge to the award, etc. Where, in pursuance of arbitration agreement, the arbitration took place outside India, there is clear exclusion of Part I, and petition to challenge the award in India is not maintainable. **Imax Corporation vs. E-City Entertainment (I) (P.) Ltd. [2017] 137 CLA 108 (SC)**

- ✚ Two-tier arbitration system is not opposed to the public policy of India. Parties to an arbitration agreement have the autonomy to decide not only the procedural law to be followed but also the substantial law and they can also agree on a two-tier arbitration system where arbitration award goes to another arbitrator or panel of arbitrators by way of appeal. There being also no provision in the Act against two tier arbitration, the enforcement of appellate award in an international commercial arbitration, which has been accepted by the parties, can be considered by the Supreme Court as such two-tier arbitration system is not opposed to public policy of India. **Centrotrade Minerals & Metals Inc. vs. Hindustan Copper Ltd. [2017] 137 CLA 1 (SC)**

Money-Laundering Laws By Advocate Pradeep K Mittal, +91-9811044365

HC : Quashes enforcement proceedings under Money Laundering Act, absent conviction & quantification of proceeds - Karnataka HC allows Oblapuram Mining Company Pvt. Ltd.'s (Petitioner) writ, quashes enforcement case information report ('ECIR') and order of attachment under the provisions of the Prevention of Money Laundering Act, 2002 (PMLA); Petitioner challenged the action of Joint Director of Enforcement, Ministry of Mines and Ministry of Environment (Respondent) in lodging and enforcing the ECIR; Notes that the offences alleged against the Petitioner were committed prior to the insertion of provision in the Schedule of PMLA, 2009 and thus had no application to Petitioner's facts; Further finds that the offence of theft was not a scheduled offence under PMLA, thus opines that denying protection to the Petitioner provided under Article 20 (which prohibits conviction of a person being subjected to ex-post facto law) of the Constitution would amount to miscarriage of justice; Holds that an ECIR can be registered only when there has been a conviction and judicial conclusion has been arrived at as to the quantum of proceeds of that crime and not prior thereto. **[LSI-1447-HC-2017-(KAR)]**

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