

# **PKMG LAW CHAMBERS**

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**MONTHLY REPORT FOR APRIL, 2015**  
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## **CIVIL LAWS**

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**CIRCULARS AND NOTIFICATIONS ISSUED BY THE MINISTRY OF CORPORATE AFFAIRS (MCA) IN THE MONTH OF MARCH, 2015**

**Circular No.03/2015 dated 03.03.2015**

The Ministry has received several representations of automatic deactivation of DSC on filing of DIR-11 (Notice of resignation of a director to the Registrar) by the resigned/resigning Director (s), and none of the new Director's details having been filed. As a result, Form DIR-12 (Particulars of appointment of directors and the key managerial personnel and the changes among them) cannot be filed by the company due to lack of an authorized signatory Director.

So, to enable the filing of such e-forms, till any alternative mechanism is put in place in MCA21 system, the Ministry came with a circular directing the ROCs within their respective jurisdictions to allow any one of the resigned director who was an authorized signatory Director for the purpose of filing DIR-12 only, along with additional fees, on request from the stakeholders and after due examination as applicable and subject to compliance of other provisions of Companies Act, 2013.

**Circular No. 04/2015 dated 10.03.2015**

The MCA came with a clarification circular relating to grant of loans and advances by Companies Act, 2013 to their employees clarifying that loans and/or advances made by the Companies to their employees, other than the managing director or whole time directors, are not governed by the requirements of Section 186 of the Companies Act, 2013.

The clarification will be applicable only if such loans/advances to employees are in accordance with the conditions of service applicable to employees and are also in accordance with the remuneration policy, in cases where such policy is required to be formulated.

**Circular No. 05/2015 dated 30.03.2015**

The MCA came with this circular clarifying that any amount received by private companies prior to 1<sup>st</sup> April, 2014 shall not be treated as “deposits” under the Companies Act, 2013 and Companies (Acceptance of Deposit) Rules, 2014. Whereas the relevant private companies has to abide by the condition to disclose the figure of such amounts and the accounting head in the notes to its financial statement for the financial year commencing on or after 1<sup>st</sup> April,2014.

Any renewal or acceptance of fresh deposits on or after 1<sup>st</sup> April, 2014 shall be in accordance with the provisions of Companies Act, 2013 and Companies (Acceptance of Deposits) Rules, 2014.

**Notification dated 31.03.2015**

The Ministry of Corporate Affairs (MCA) came with a Notification dated 31.03.2015, delegating the powers and functions vested under Section-94(5) of Companies Act, 2013, immediate inspection of documents or the extract required, to the Regional Directors at Mumbai, Kolkata, Chennai, Ahmedabad, Hyderabad and Shillong.

The Notification also says 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.

**PREVENTION OF MONEY LAUNDERING ACT- BY SHRI PRADEEP  
K MITTAL-9811044365**

- Rose Valley Resort Estate & Construction India Ltd is a public limited company who has collected a sum of Rs. 12.82 crores by issuing non-convertible debentures from members of the public during the year 2001-02, 2004-05, 2005-06 and 2007-08 without filing proper documents either to Register of Companies or SEBI. SEBI issued summons dated 14th July, 2011 under section 11C(3) of SEBI Act, 1992 calling upon the Company to furnish information and/or documents. Finally, an adjudication proceeding was initiated and by order dated 26th March, 2013 the appellant No. 1 was held guilty of non-compliance of provisions of the SEBI Act and a monetary penalty of Rs. 1 crore was imposed upon it. In appeal, Security Appellate Tribunal modified the penalty imposed upon the appellant and reduced the same to Rs. 10 lakhs. In the meantime, criminal proceeding being case No. C/1421 of 2013 was filed before the learned Chief Judicial Magistrate, Calcutta for violation of section 12A read with section 24 of the SEBI Act against the appellant. The offence under Section 24 of the SEBI Act is a "scheduled offence" under the Prevention of Money Laundering Act, 2002 and bank accounts and property can be attached in appropriate cases. The Division Bench of Calcutta High Court has upheld the attachment of amount lying in the bank account on the premise that the amount is presumed to be "proceeds of crime" and the company has committed the offence under Section 24 of SEBI Act. Rose Valley Real Estate & Construction Ltd Vs. Union of India MANU/WB/0192/2015 Cal DB.

- The Division Bench of Patna High Court has noted the fact that amount of Rs. 466,19,08,264/- had been collected from the investors in the Odisha region by the petitioner company and further that total collections from the public at large exceeded Rs. 15,484 crores. On these as well as other extensive materials enumerated in the provisional attachment order, the Joint Director, Enforcement Directorate, recorded that he had reasons to believe that if no Provisional Attachment Order was passed in the case at that crucial stage, the investments in the properties made out of proceeds of crime were likely to be concealed, transferred or dealt with in such a manner that may result in frustrating the proceedings relating to confiscation of such proceeds of crime under Chapter III of the PMLA. Accordingly, he ordered the provisional attachment of the immovable properties mentioned in Schedule-A to the order comprising 2807 Bank accounts identified till then through investigation having Rs. 295,85,31,627/- as balance, along with further credits, if any, therein, as well as interest accrued thereon, in terms of Section 5(1) of the PMLA and its proviso. The Court declined to interfere with the attachment orders and observed that the contents of the show cause notice and contents of the orders are not patently absurd so as to call for quashing of the same. *Rose Valley Hotels & Entertainment Ltd Vs. UOI MANU/BH/0147/2015.*
- The Adjudicating Authority under the PMLA has passed an order confirming the provisional attachment of bank accounts. Rai Foundation has challenged the same before the Delhi High Court by way of Writ Petition which was dismissed on the contention that when alternative remedy by way of an appeal before Appellate Tribunal exists, the remedy of Writ Petition under Article 226 of Constitution of India cannot be ordinarily exercised. *Rai Foundation Vs. Enforcement Directorate MANU/DE/1552/2015.*

**COMPANIES ACT 1956/2013 - BY SHRI PRADEEP K. MITTAL-  
9811044365**

- The Company Petition No.10/1/2015 was filed by M/s Jindal Stainless Limited ( Turnover Rs. 12,000 Crore – Sh O P Jindal Group) was filed before the Hon'ble Company Law Board which came up for hearing on 01.04.2015 and the Hon'ble Company Law Board has ordered issuance of notice.
- The Bombay High Court has held that the Respondent Company was indebted to petitioner for an amount of \$176,640.94 and amount is not in dispute as the same has been confirmed and admitted several times by the Respondent Company including in the Affidavit in Reply. Despite notice of winding up

being served, the Respondent company failed and refused to pay this amount and hence winding up petition must be admitted. Seven Trent Vs. Capital Control India (P) Ltd MANU/MH/2297/2014.

- The Company has filed winding up petition under Section 433(e) of Companies Act, 1956 showing the address from where the Registered Office of the contesting party has been shifted long back and the changed office address was appearing on the website of the MCA. Due to change of address of the Regd Officer, the contesting company did not appear and winding up petition was decided ex-parte. On coming to know, the contesting company moved an application under Rule 9 of Company Court Rules for recall of order of winding up. The court recalled the order of winding up and gave an opportunity to make payment of the admitted amount. M S Marketing (P) Ltd Vs. Havells India Ltd MANU/KA/3326/2014.
- The petition under Section 100 Companies Act, 1956 for reduction of paid up share capital of the company has been allowed since there was no objection from creditor or member of the company despite public notice having been published and also Regional Director also having their affidavit conveying no objection to such reduction of paid up share capital. RAMP Green Solutions (P) Ltd MANU/DE/0932/2015.
- In case, a criminal complaint is pending before court trying the criminal matter and on the some what similar fact, the petition under Section 397 of Companies Act, 1956 has also been filed before CLB, the proof required in both the proceedings are quite different and hence proceedings before both the forums can continue and the proceedings before CLB under Section 397 of Companies Act, 1956 are not liable to be stayed. Sheeba Wheel India (P) Ltd Vs. Satvijay Investment & Consultancy Services (P) Ltd MANU/DE/0768/2015.
- The Bombay High Court allows Regional Director (RD) to raise income tax related objections to scheme of amalgamation. The Court further held that, “Regional Director is not only entitled to but is duty bound to bring to the attention of the Court any provision in the scheme which may contravene/circumvent the provisions of any law including the law pertaining to Income Tax”. The court further rejected petitioners’ reliance on MCA Circular dated January 15, 2014 that since Income Tax Authorities did not raise any objection within 15 days of notice, it was presumed that they did not object to the scheme, and thus, RD was precluded to raise any tax related objection; Rules that, “The Circular merely provides a mechanism for the Regional Director to invite the comments of the Income Tax Department.. does not prevent the Regional Director from raising such objections..with regard to the scheme as he may deem fit including objections and

observations pertaining to taxation laws” LSI-386-HC 2015 Bombay High Court. LSI-386-2015 (BOM). The CLB has held that complaint of removal of director by majority shareholder cannot be examined in a petition under Section 397/398 of Companies Act, 1956 since there was no equality of shareholding, no equal participation in day to day management, no pre-existing partnership converted into a private limited company. The CLB relied upon in Hind Overseas (P) Ltd vs Raghunath Prasad Jhunjunwala, Hanuman Prasad Bagri vs Bagress Cereals (P) Ltd. The CLB further held that petitioner has tendered his resignation – which has been subsequently challenged. [LSI-414-CLB-2015-(MUM)]

- The Punjab & Haryana High Court has sanctioned the merger of Ranbaxy Laboratories Ltd with M/s Sun Pharmaceuticals Industries Ltd and, inter-alia, examined from the point of view of Competition Law and further observed that a perusal of the order passed by the Competition Commission shows that exhaustive exercise was carried out to find out the effect of merger on the public at large. The Competition Commission has issued comprehensive directions in consonance with the provisions of the Competition Act, which are to be complied with by the Transferor/Transferee Companies. No doubt, the Commission has taken full care of the interest of the consumers of the medicines manufactured by both the companies, however, still as an abundant caution, it is added that during the period the entire process of Divestment is completed, the monitoring agency shall also monitor the prices of the drugs manufactured by the combined entity. MANU/PH /0305/2015.
- The Delhi High Court, while sanctioning the Scheme of Merger under Section 391 Companies Act, 1956, observed that a case under Section 120 of the IPC is pending before Hon'ble Patiala House Court, New Delhi against Mr. Shiv Kumar Garg, Director of the Company. Regional Director in his affidavit has submitted that Registrar of the Companies has observed that the Transferee Company has contravened the provisions of *section 297* of the Act. The Petitioner Company submits that compounding application under *section 621A* of the Act before Company Law Board has already been filled and same is pending. The Court further observed that the sanction of the Scheme will not come in way of the compounding application being considered on merits. The Court further directed the Registrar of Companies to independently examine the books of accounts irrespective of the sanction of the scheme and in case any violation or breach of any statutory provision is found, the Directors of the Transferor and Transferee Company shall be liable irrespective of the sanction of the scheme. Eldeco Midc SEZ Ltd MANU/DE/3799/2014.

- The director who is in charge of the company shall be liable for contempt in case the company willfully default in complying with the orders of the Company Law Board. The High Court has power under Section 10 to punish the contemner for will dis-obedience of the orders of the CLB. *E Bapanaih Vs. K S Raju* 2015 (124) CLA 445. SC.
- An isolated act or single act of oppression cannot be equated with the acts of oppression thus entitling the petitioner to file a petition under Section 397. Where the only act of oppression relates to appointment of a director which has been removed, the petition is liable to be dismissed. *Rajesh Goplakkrishna Vs. Trikon Electronics (P) Ltd* 2015(124) CLA 543 (CLB).
- The Division Bench of Calcutta High Court has held that Debt Recovery Tribunal has no power to order for winding up of the debtor company and the jurisdiction exclusively lies with the company court under the Companies Act. *Jeevan Diesels & Electricals Vs. HSBC Ltd* 2015(125) CLA 58 Cal.
- Where prosecution of a person, no permission from the Central Government is envisaged, the period undergone for obtaining such permission cannot be excluded for the purpose of calculating the period of limitation for a criminal complaint by the Registrar of Companies. If the complaint is filed beyond the time prescribed, the complaint is liable to be quashed on the ground of limitation. *Govind Rajan Vs. MO Roy* 2015(123) CLA 74 Madras.
- On a petition for reduction of share capital, the objector shall have to demonstrate that the valuation is patent unreasonable especially when non-promoter shareholders shall have, with overwhelming majority, have sanctioned the resolution *Cadbury India Ltd* 2015 (125) CLA 77 Bombay High Court.
- The company petition under Section 397 and 398 is liable to be dismissed on the sole ground that the petitioner has deliberately concealed material and relevant facts which ought have to been disclosed in the petition and has, therefore, not approached the CLB with clean hands. *Urban Infrastructure Trustees Ltd Vs. Joyce Realtors (P) Ltd* 2015 (125) CLA 111 CLB.
- The Section 13 of the Securitisation Act shall prevail over Section 537 of the Companies Act, 1956 and no leave of the company court would be required for sale of securities by secured creditor of the company in liquidation. Further Section 531 and 531A have no application and do not apply in the case of valid sale execution under the Securitisation Act. *Indian Bank Vs. Sub-Registrar* 2015(125) CLA 136 (T& AP).

- The Delhi High Court has held that notice to the company cannot be construed as notice to the director of the company especially when he resigned as a Director of the Company. The Notice had to be served either at his place of residence/ last known place of his work and on date of issue of notice due to his resignation from directorship, company's address was not appellant's address, The Order of ED was set aside and liberty was given to serve fresh notice to him. LSI.372.HC.2014.Delhi High Court.

**INCOME TAX CIRCULAR AND NOTIFICATION - BY SHRI MANOJ  
KUMAR MITTAL CA - 9810764620**

- The CBDT has issued **Circular No. 3/2015 dated 12.02.2015** in which it has issued a clarification regarding the expression “amounts not deductible” under section 40(a)(i) of the Income-tax Act, 1961. The CBDT has referred to its earlier Instruction No. 02/2014 dated 26.02.2014 and clarified that for the purpose of making disallowance of “other sum chargeable” under section 40(a)(i) of the Act, the appropriate portion of the sum which is chargeable to tax under the Act shall form the basis of such disallowance and shall be the same as determined by the AO having jurisdiction for the purpose of section 195(1) of the Act. Further, where determination of “other sum chargeable” has been made under sub-sections (2), (3) or (7) of section 195 of the Act, such a determination will form the basis for disallowance, if any, under section 40(a)(i) of the Act.
- The CBDT has issued **Circular No. 2/2015 dated 10.02.2015** on the issue of chargeability of interest u/s 234A of the Income-tax Act, 1961 on self-assessment tax paid before the due date of filing the return of income. The CBDT has pointed out that in CIT vs. Prannoy Roy **309 ITR 231 (SC)**, the Supreme Court has held that interest u/s 234A of the Act on default in furnishing return of income shall be payable only on the amount of tax that has not been deposited before the due date of filing the return for the relevant assessment year. The CBDT has accordingly reviewed the present practice of charging interest u/s 234A of the Act on self-assessment tax paid before the due date of filing the return of income. The CBDT has decided that no interest u/s 234A of the Act is chargeable on the amount of self-assessment tax paid by the assessee before the due date of filing the return of income.
- The CBDT Chairman vide letter dated 26.03.2015 addressed the principal Chief Commissioner and Principle Director General and told about the



intervention of the PM in reference to public grievance matter and its personal monitoring of the public grievance and has instructed them to give utmost importance to the public grievance and report the status of it on continuous basis.

- The CBDT has now notified the Income computation and disclosure requirements vide notification no. 32/2015, F. No. 134/48/2010-TPL, *dated* March 31, 2015. This is applicable only for computation of income chargeable under the head "profit and gains of business or profession" or "income from other sources" and not for the purpose of maintenance of books of accounts. It further reiterates that in the case of conflict between the provisions of the Act and these Accounting standards, the provisions of the Act shall prevail to that extent. This will be applicable w.e.f 01.04.2015 and will accordingly apply for A.Y.2016-17.

### **The Undisclosed Foreign Income and Assets (Imposition of Tax) Bill, 2015**

- The Undisclosed Foreign Income and Assets (Imposition of Tax) Bill, 2015 has been introduced in the Parliament on 20.03.2015. The Bill provides for separate taxation of any undisclosed income in relation to foreign income and assets. Such income will henceforth not be taxed under the Income-tax Act but under the stringent provisions of the proposed new legislation.
- The salient features of the Undisclosed Foreign Income and Assets (Imposition of Tax) Bill, 2015 are as under:-
- Scope – The Act will apply to all persons resident in India. Provisions of the Act will apply to both undisclosed foreign income and assets (including financial interest in any entity).
- Rate of tax – Undisclosed foreign income or assets shall be taxed at the flat rate of 30 percent. No exemption or deduction or set off of any carried forward losses which may be admissible under the existing Income-tax Act, 1961, shall be allowed.
- Penalties – Violation of the provisions of the proposed new legislation will entail stringent penalties.

- The penalty for non-disclosure of income or an asset located outside India will be equal to three times the amount of tax payable thereon, i.e., 90 percent of the undisclosed income or the value of the undisclosed asset. This is in addition to tax payable at 30%.
- Failure to furnish return in respect of foreign income or assets shall attract a penalty of Rs.10 lakh. The same amount of penalty is prescribed for cases where although the assessee has filed a return of income, but he has not disclosed the foreign income and asset or has furnished inaccurate particulars of the same.
- Prosecutions – The Bill proposes enhanced punishment for various types of violations.
- The punishment for willful attempt to evade tax in relation to a foreign income or an asset located outside India will be rigorous imprisonment from three years to ten years. In addition, it will also entail a fine.
- Failure to furnish a return in respect of foreign assets and bank accounts or income will be punishable with rigorous imprisonment for a term of six months to seven years. The same term of punishment is prescribed for cases where although the assessee has filed a return of income, but has not disclosed the foreign asset or has furnished inaccurate particulars of the same.
- The above provisions will also apply to beneficial owners or beneficiaries of such illegal foreign assets.
- Abetment or inducement of another person to make a false return or a false account or statement or declaration under the Act will be punishable with rigorous imprisonment from six months to seven years. This provision will also apply to banks and financial institutions aiding in concealment of foreign income or assets of resident Indians or falsification of documents.
- Safeguards – The principles of natural justice and due process of law have been embedded in the Act by laying down the requirement of mandatory issue of notices to the person against whom proceedings are being initiated, grant of opportunity of being heard, necessity of taking the evidence produced by him into account, recording of reasons, passing of orders in writing, limitation of time for various actions of the tax authority, etc. Further, the right of appeal

has been protected by providing for appeals to the Income-tax Appellate Tribunal, and to the jurisdictional High Court and the Supreme Court on substantial questions of law.

- To protect persons holding foreign accounts with minor balances which may not have been reported out of oversight or ignorance, it has been provided that failure to report bank accounts with a maximum balance of upto Rs.5 lakh at any time during the year will not entail penalty or prosecution.
- Other safeguards and internal control mechanisms will be prescribed in the Rules.
- One time compliance opportunity – The Bill also provides a one time compliance opportunity for a limited period to persons who have any undisclosed foreign assets which have hitherto not been disclosed for the purposes of Income-tax. Such persons may file a declaration before the specified tax authority within a specified period, followed by payment of tax at the rate of 30 percent and an equal amount by way of penalty. Such persons will not be prosecuted under the stringent provisions of the new Act. It is to be noted that this is not an amnesty scheme as no immunity from penalty is being offered. It is merely an opportunity for persons to come clean and become compliant before the stringent provisions of the new Act come into force.
- Amendment of PMLA – The Bill also proposes to amend Prevention of Money Laundering Act (PMLA), 2002 to include offence of tax evasion under the proposed legislation as a scheduled offence under PMLA.
- Thus, in keeping with the commitment of the government for focussed action on black money front, an unprecedented and multi-pronged attack has been launched to root out the menace of black money. The Government is confident that this new law will act as a strong deterrent and curb the menace of black money stashed abroad by Indians.

**CASE LAWS - BY SHRI MANOJ KUMAR MITTAL, CA - 9810764620**

- Refund of excess self-assessment paid by assessee would not be eligible for interest under section 244A as the provisions of section 244A would not apply thereto. [2015] 55 taxmann.com 1 (Delhi)

- 'Tax payable' is to be arrived at by deducting credit under section 115JAA from 'gross tax payable' and on this amount of 'tax payable' surcharge and cess are to be computed. **[2014] 369 ITR 304 (Allahabad)**
- Where Assessing Officer did not consider explanation tendered by assessee regarding transactions recorded in seized diary and also overlooked working of peak credit given by assessee, income was directed to be determined on basis of highest peak of unexplained receipts and payments. **[2015] 55 taxmann.com 308 (Gujarat)**
- Where assessee, a promoter of JISCO, having paid application money for acquiring non-convertible debentures (NCDs) in right issue offered by JISCO, surrendered those NCDs to UTI which paid remaining amount and got allotment of NCDs in its favour, in view of fact that assessee had subscribed to NCDs as a matter of commercial expediency for making right issue successful which was in business interest of JISCO as well as assessee, application money in question forgone by assessee was to be allowed as business loss. **2015] 55 taxmann.com 362 (Delhi)**
- Section 271 AAA and Section 271(1)© have different concomitant scopes and are mandated to operate exclusively. **[2015] 55 taxmann.com 284 (Mumbai - Trib.)**
- AO couldn't treat exp. on launching of brand as deferred revenue exp. if it was in nature of revenue exp. Once an expenditure is revenue in nature, deduction is to be allowed under section 37(1); amortisation of same would be unjustified. **[2015] 55 taxmann.com 289 (Delhi)**
- No TDS on commission paid to NR agent for rendering services outside India if he didn't have any PE. If services, for which payment had been made to non-resident, was wholly rendered outside India, no TDS liability would arise. **[2015] 55 taxmann.com 413 (Mumbai - Trib.)**
- Non-furnishing of PAN by NR doesn't attract higher TDS rate of 20% u/s 206AA if tax rate under DTAA is beneficial. TDS on payments made to non-residents who did not furnish PAN can be deducted as per rate prescribed in DTAA and section 206AA cannot be invoked to insist on tax deduction at rate 20%. **[2015] 56 taxmann.com 1 (Pune - Trib.)**

- Rs. 1 lakh received by the appellant- assessee as an award from B.D. Goenka Trust for Excellence in Journalism would be a capital receipt and hence not income taxable under the Act, i.e. Income Tax Act, 1961. **56 taxmann.com 80 (Delhi)**

### **CENTRAL EXCISE –BY SHRI PRADEEP K. MITTAL-9811044365**

- Show Cause Notice has been issued after 22 months from the date of excise audit has been done by the Department and the SCN does not allege deliberate act of suppression of fact, fraud mis-statement mere act of omission without there being any intention to evade shall not allow the department to invoke extended period of limitation under proviso to Section 11A of Central Excise Act. CCE Vs. Triveni Engineering & Industries Ltd 2015 (317) ELT 408 (All).
- Where Commissioner (A) has directed deposit smaller amount of deposit as a condition precedent and the appellant fails to deposit the same and the appeal was dismissed. Against this, party filed an appeal before Tribunal and Tribunal heard the matter on merits and decided. The High Court held that the Tribunal could not have heard on merits and should have remanded the matter to the Commissioner (Appeal). CCE Vs. Shree Jagdamba Dyeing & Printing Mills (P) Ltd 2015(317) ELT 419 (Guj).
- In case intermediate product is not marketable, no excise duty can be claimed by the Department in the absence of marketability. CCE Vs. Sundaram Clayton Ltd 2015(317) ELT 433. Madras.
- When the theory of clandestine removal of goods has been rejected both by the Commissioner (A) and Tribunal, the finding of facts cannot be challenged before the High Court being pure appreciation of facts. CCE Vs. Welcure Drugs & Pharmaceuticals Ltd 2015 (317) ELT 436. Raj.
- The High Court, on appeal, granted time to appellant to deposit the entire amount duty and penalty confirmed after tribunal dismissed the appeal of the appellant on the failure of the appellant to make payment of pre-deposit – since the question relates to deeper examination of factual matrix and on appellant undertaking to make payment of pre-deposit. Rathi Ispat Ltd Vs. CCE 2015(317) ELT 449 (All).

**SERVICE TAX – BY SHRI PRADEEP K. MITTAL  
9811044365**

- The Hon'ble Punjab & Haryana High Court in the case of M.L.Goyal Vs. Union of India has pronounced that the provisions relating to charging of service tax on renting of immovable property are not ultravires to the constitution. The law was amended with retrospective effect i.e. 01.06.2007. The Punjab & Haryana High Court has followed a judgment of Delhi High Court cited as 2011 (24) STR 129 and dismissed the challenge the validity of service tax on renting of immovable property with retrospective effect.
- When the Contractor has deposited the entire service tax in respect of the whole activities of contract, there is no reason why the sub-contractor be saddled with the liability towards Service Tax in respect of earth excavation, back-filling, site leveling, grading and disposal. SCW Infrastructure Ltd. Vs. CCE 2015 (37) STR 985 Chattisgarh.
- The reason that Chartered Accountant who appeared before the Commissioner (Appeal), had undergone a heart surgery and the person looking after the legal work in the department in the company has left the services and another Senior Officer Incharge had a major accident, this constitutes sufficient cause for condonation of delay in filing the appeal before the Tribunal. The Hon'ble High Court has set aside the Order of Tribunal rejecting the appeal on the ground of limitation and hence delay has been condoned, the Order of Tribunal has been set-aside and the Tribunal has been directed to hear the appeal on merit. Khandelwal Construction Company Vs. Commissioner of Central Excise 2015 (37) STR 989 Rajasthan.
- The Appellant company has allowed use of vacuum insulated storage tank to their customers for a fixed term of three years on payment of rental of Rs. 27500/- per month. The ownership in the tank shall always remain with the Company and the customers has no right to sell, alienate, mortgage or sell the said tank and the customer has only right of user. The Appellant Company cannot be held to be banking or other financial institution in relation to the activity of giving the said tank on rent and no service tax is payable as banking or other financial institution. Inox Air Products Ltd. Vs. CCE 2015 (37) STR 1024 Tribunal.
- Mandap Keeper Services in relation to marriages cannot be held to be a religious function but is a purely social function and, therefore, demand of service tax is sustainable. CCE Vs. Central Panchayat 2015 (37) STR 1038 (Tribunal).

- NASSCOM is an Apex Body of Software Companies and the Software Companies contribute subscription amount for achievement of various objectives of public, industry and national importance including awareness/education and export. The subscription amount so charged by NASSCOM is not liable to Service Tax as “Club and Association Services” U/s 65(105)zzz(e). NASSCOM Vs. CST Delhi 2015 (37) STR 1041 Tribunal, Delhi.
- Man Power Supply services hired for Health Centre at the factory in accordance with the statutory requirements under Rajasthan Factories Rules, 1951, therefore, this activity is in or in relation to the manufacture of final product and, therefore, service tax paid on man power supply is eligible to be taken as Cenvat Credit. Binnani Cement Ltd. Vs. CCE 2015 (37) STR 1071 (Tribunal) Delhi.
- Where the services availed for construction of railway siding to facilitate transportation of coal to Captive Power Plant in the factory, transportation of coal is absolutely necessary for production of electricity in Captive Power Plant and hence connected with the business of manufacturing the final product. The services to be treated as used in or in relation to procurement of inputs and, therefore, service tax paid on the above services, cenvat credit is eligible. RSWM Ltd. Vs. Commissioner of Central Excise 2015 (37) STR 1074 Tribunal, Delhi.
- When wheat has been subjected to several process such as cleaning of impurities, grinding, milling by machines and resulting into production of Maida, Aatta, Suji and Bran, it amounts to manufacture within the meaning of Section 2(f) of the Central Excise Act and no Service Tax is leviable when there is a manufacture of goods. Jayakrishna Floor Mills Pvt.Ltd. Vs. Commissioner of Central Excise 2015 (37) STR 1079 Tribunal Chennai
- The Tribunal has held that in case there is a minor deficiency in the invoice/bills/challan and documents evidencing payment of duty, which enable the assessee to take the Cenvat Credit, an opportunity should be given to the assessee to remove the minor clerical error or deficiency in the document to enable him to avail the Cenvat Credit and the adjudicating authority should not reject the claim for Cenvat Credit without giving such opportunity as the same amount to violation of principle of natural justice. Sohan Motors Pvt. Ltd. Vs. Commissioner of Central Excise 2015 (37) STR 1086 (Tribunal)
- Where non-banking financial institution has issued Corporate Guarantee to various Corporate entities to secure their advances, in consideration of getting

commission from those Corporate entities, no service tax is leviable on such commission as the applicant is not a banking company and the Service Tax is payable only on issuance of bank guarantee issued by a bank. Infrastructure Leasing and Financial Services Limited Vs Commissioner of Service Tax (2015) 37 STR 487 Tribunal.

- Service Tax paid on input services such as (a) brokerage for sale/purchase of shares and securities for trading (b) custodian charges (c) event management service charges are in the nature of input services having nexus to their business entity and hence Cenvat Credit on the aforesaid input services are allowable. Bank of Baroda Limited Vs. Commissioner of Central Excise 2015 (37) STR 488 Tribunal (Mumbai).

### **CIVIL LAW - BY SHRI PRAVEEN K. MITTAL -9810826436**

- In the partnership deed, if there is a arbitration clause, no partner can refuse to abide by it and can file a civil suit for adjudication of his claim. The arbitration clause cannot be discarded by any of the partners of the partnership firm. DP Kadam Vs. JC Suneja 2015 (217) DLT 633 Delhi High Court.
- The Madras High Court has held that plaint should be rejected only when the requirement as contemplated under Order 7 Rule 11 CPC is pleaded and proved. The averments of the plaint on the face of it, must show that the case of the party who files an application under Order 7 Rule 11 CPC is made out. On the other hand, if the grounds raised by the party in his application under Order 7 Rule 11 CPC require further enquiry or probing of the matter, which otherwise is not possible without conducting a trial, the plaint cannot be rejected simply based on the allegation made by the party who filed the said application. Therefore, such exercise of considering the application under Order 7 Rule 11 CPC should be done by the trial Court with utmost care and caution, since the right of a party to have a full-fledged trial cannot be denied at the threshold by rejecting the plaint based on the averments contained in the application alone, unless the grounds raised in such application are also justified through a plain reading of the plaint itself. CV Karthikeyan Vs. P Subramaniam MANU/TN/2525/2014.
- The Division Bench of Delhi High Court has held that no doubt, the appellants/defendants in their written statement have denied the averments made in the plaint and also their liability but firstly the written statement is not to be considered at the stage of consideration of application under Order 7 Rule 11 CPC and secondly this is a disputed question of fact which would be settled after trial. At this stage, all that has to be examined is whether the plaint discloses a cause of action or not and Single Judge has already held that



plaint does disclose a cause of action and does prima facie show that part of the cause of action has arisen within the territorial limits of this Court. Hem Chand Sharma Vs. Innovative Textiles Ltd MANU/DE/0965/2015.

- The Delhi High Court has held that issue of pecuniary jurisdiction has to be seen as per the averments in the plaint at the time of filing of the suit and not subsequent event. Undoubtedly Section 15 CPC provides that a suit shall be instituted in the Court of lowest grade competent to try it however as per Section 7(iv) of the Court Fees Act, the plaintiff has the right to value the relief of injunction as he deems fit subject to the same being neither arbitrary nor fanciful. Whether the valuation for the relief of injunction is arbitrary or fanciful is a question of fact and thus cannot be decided as a preliminary issue on a misc. application. Further the respondent in the suit not only prays for injunction but also mesne profit and damages which were not quantified and for which it was stated that the court fees will be paid later on, this additional issue cannot be decided without leading evidence. The issue of court fees and pecuniary jurisdiction of the learned Trial Court being a mixed question of fact and law, the learned Trial Court rightly held that the issue cannot be decided as a preliminary issue. Pravesh Mighlani Vs. Punam Anand Kumar MANU/DE/0830/2015.
- The 7 Seven Judge Constitution Bench of the Supreme Court in V. Dhanpal Chettier v. Yashodai Ammal MANU/SC/0505/1979 : AIR 1979 SC 1745 has held that it was not necessary to give notice under Section 106 of Transfer of Property Act in order to get a decree or order of eviction against the tenant under any State Rent Control Act. The termination of lease in accordance with the said Act is unnecessary. In other words, filing of suit and issuance of summons to the tenant amounts to termination of tenancy and separate notice terminating the tenancy is not required to be served.
- The Supreme Court has Forasol v. ONGC, MANU/SC/0034/1983 : AIR 1984 SC 241, has held that the date of final disposal of the suit, i.e. the date of judgment and decree must be the date on which the exchange rate is fixed, for the purposes of conversion of the foreign currency decretal sum to Indian Rupees. This Court is mindful that the plaintiff cannot claim an amount greater than that prayed for in the plaint, based on escalation in the exchange rate, as noted in United India Insurance Co. Ltd. v. Patricia Jean Mahajan and Ors., MANU/SC/0563/2002 : (2002) 6 SCC 281.
- The Punjab & Haryana High court has held that relationship between the parties can be proved by way of conduct as well. The High Court viewed that court of first appeal has rightly recorded the findings that plaintiff has been able to prove his relationship with Puran Singh to be of son and father by conduct as well as by examining himself as PW-1 and by examining PW-2

and PW-3 who were none else but his uncle and cousin. Sukhwant Singh Vs. Saroop Singh MANU/PH/0329/2015.

**ARBITRATION & CONCILIATION ACT, 1996 - BY SHRI PRAVEEN K. MITTAL-9810826436**

- The arbitration clause in the Agreement survive despite the fact that the agreement has been determined for any of the reasons. In case the party fails to nominate the arbitrator, the, aggrieved can approach the court for appointment of arbitrator. ITE India (P) Ltd Vs. Delhi Toursim & Transportation Dev. Corpn Ltd 2015(217) DLT 412.
- It is not the case of the petitioner who filed petition under Section 34(2) of Arbitration Act, 1996 that the arbitrator has not decided the case sound head and good heart but the contention is that the findings are erroneous. The petition is not maintainable for challenging the findings of facts unless these are totally perverse and erroneous. National Highways Authority of India Vs. Oriental Structural Engineers (P) Ltd 2015(217) DLT 678.
- The Arbitrator has the power to include the pre-award interest in the sum or amount for which the Award has been made by the Arbitrator. In other words, the party is entitled to interest over interest for the period subsequent to the passing of the Award. Hyder Consulting (UK) Ltd Vs. State of Orissa 2015 (125) CLA 1 SC.

**CONSUMER LAWS -BY SHRI PRAVEEN K. MITTAL-9810826436**

- The Supreme Court has held that no punitive damages can be awarded against the party by the consumer forums/tribunal unless the complainant laid the basis in the complainant and led cogent and substantial evidence and, therefore, opposite party has the opportunity to meet the case of punitive damages against it. General Motors India (P) Ltd Vs. Ashok Ramnik Lal 2015( 124) CLA 478 SC.

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