

# PKMG LAW CHAMBERS

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MONTHLY REPORT FOR DECEMBER, 2014

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

- When a petition U/s 397 is filed before the Company Law Board questioning the removal of Director after a long delay without any explanation for the delay in challenging the said removal, the Board cannot interfere with the democratic process of the Company since the majority shareholders have taken the decision in the interest of the Company. *S. Vasantha Kumar Vs. A. Ancillary Pvt. Ltd.* 2014 (122) CLA 499 CLB. CLA.
- After the money decree has been obtained, the decree holder is required to file execution petition for satisfaction of money decree. Without filing the execution, straightway winding up petition U/s 433(e) of the Companies Act, 1956 cannot be filed. *GATI Ltd. Vs. Atcom Technology Ltd.* 2014 (185) Company Cases 82 Mumbai.
- The Supreme Court has held that a Private Company when it becomes a deemed Public Company in terms of sub-section (1), (1A), (1B) and (1C) of Section 43A, can also revert back to the original status of Private Company but such original status is subject to the approval of the Central Government. *D.R. Kavasmanek Vs. Gharda Chemicals Ltd.* 2014 (123) CLA 168.
- The Company Law Board has held that under Section 108(1D) of the Companies Act, 1956, the Registrar has power to extend the period for lodging the shares with the Company to avoid hardship. The concept of hardship is lodging the instrument shall mean lodging the instrument for the first time and this power cannot be exercised repeatedly

or successively in the event of transfer of shares has been refused. Where transfer of shares is refused due to mismatch of signature or for any other reason, the transferee is at liberty to lodge a fresh instrument removing the defects and the same would not be a case of re-lodgment but a fresh lodgment of valid instrument. *Vijay Finance Corporation Ltd. Vs. Peerless General Finance Company Limited* 2014 (123) CLA 253 CLB.

- The Company Court under the Companies Act, 1956 does not have any power to interfere with the proceedings initiated U/s 13(4) or U/s 17 & 18 of the Securitization Act. *Kingfisher Airlines Limited Vs. State Bank of India* 2014 (123) CLA 279 Karnataka.
- When the meeting of the Board of Directors itself is invalid consequently all resolutions passed including resolution for removal of Director is also invalid. *Varun Mishra & Ors. Vs. Krishna Pharmacy Pvt. Ltd.* 2014 (123) CLA 297.
- The Division Bench of Madras High Court in the case of *Mangalam Vs. Citrex Products Ltd* MANU/TN/1586/2014 has held that Civil Suit could be maintainable in case involving rectification of Register of Members and also relating to interest in immoveable property since the CLB has no power to deal with issues of interests in immoveable property.

**CORPORATE LAWS - BY SHRI PRADEEP K. MITTAL-  
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- For the purpose of counting limitation for issue of notice upon dishonor of cheque, the date of receipt of dishonoured

cheque shall be excluded. For the purpose of issuance of notice of dishonor, the court does not have any power to condone the delay in issuing notice either under Cr P C nor under the provisions of Limitation Act. If the intimation for dishonor for cheque was received on 25.1.2012 – notice issued on 24.2.2012 is within limitation. CCS Infotech Ltd Vs. State 2014 (213) DLT 495.

- If a person is accused for violation of the provisions of FERA, during interrogation, he has right not to answer or explain entries as answer to these questions, may be lead to his prosecution. A person is entitled to invoke their right against self-incrimination under Article 20(3) of the Constitution of India. The proceedings under FERA is deemed to be judicial proceedings and, therefore, it does not lead to conclusion that the refusal by the noticee to answer the interrogation would be taken as contravention of the provisions of FERA. S K Jain Vs. UOI 2014 (213) DLT 449.
- Non-appearance by the noticee in response to the notice issued under the provisions of FEMA does not warrant or enable the passport authorities to revoke the passport. When the irrelevant and extraneous consideration have been taken account for the purpose of revocation of passport, the said revoking the passport is liable to be set aside and quashed. Lalit Kumar Modi Vs. Union of India 2014(213) DLT 503 Delhi DB.
- The company is juristic person and the issue whether in the suit for recovery of money filed against the company before the High Court, the directors could also be made party when there are specification allegations and imputation against the directors because of which the plaintiff/complainant has

suffered losses, such directors shall have to be face trial before the court and cannot seek discharge from the array of parties on the contention that the primarily liability is that of a company. *Shinichoro Ishikawa Vs. N K Sehgal* 2014(213) DLT 535 (Delhi DB).

- A complaint U/s 138 of NI Act cannot be quashed merely on the analogy that there is no averment in the complaint that the notice has been served. Further, the complaint cannot also be quashed merely on the ground that no proof of service of notice was attached along with the complaint. The Complainant has right to produce the documentary evidence at the time of trial. At the preliminary stage, the complaint cannot be quashed in the absence of these documents. *Ajeet Seeds Ltd. Vs. K. Gopala Krishnaiah* 2014 (122) CLA 494 SC.
- The Corporate veil can be lifted only when subsidiary is a mere camouflage or sham and deliberately incorporated by the person for dishonestly avoiding statutory or contractual liability. The extensive, widespread control on the management of subsidiary Company by the holding Company, liability of subsidiary cannot be fastened on the holding company. *B.R.Saluja Vs. Air India Limited* 2014 (122) CLA 453 SC.
- The provisions of SICA and more particularly Section 22 of SICA shall prevail over the provisions of Debt Recovery Act. In other words, if the bank has filed OA for recovery of money against the Sick Industrial Company on an application U/s 22 of SICA, the proceedings before DRT are liable to be stayed. *KSL Industries Ltd. Vs. Arihant Threads Ltd.* 2014 (123) CLA 198.

- In a complaint U/s 138 of NI Act, if the allegations are merely Directors are in-charge and responsible for the affairs of the Company, without the particular role played by each of the accused Director, the High Court may, on a petition U/s 482 of Cr. P.C., quash the criminal complaint. In this case, the Hon'ble Supreme Court has discussed the entire law with respect to liability of directors in the case of dishonor of cheque U/s 138 of NI Act. Gunmala Sales Pvt. Ltd. Vs. Anu Mehta 2014 (123) CLA 214.
- When the cheque is dishonored due to stop payment instructions issued by the payor of the cheque, Section 138 of the NI Act is attracted and the complaint shall be maintainable. Pulsive Technologies Pvt. Ltd. Vs. State of Gujarat 2014 (123) CLA 241(SC).
- The criminal complaint U/s 138 of NI Act can be entertained only at a place where the bank of the payor is located. It is immaterial when the notice has been issued from Gurgaon or any other place(other than Bangalore) the complaint shall be maintainable only at the court having the appropriate jurisdiction at Bangalore and if filed at any other place, the same is liable to be returned to be filed at the Court at Bangalore only. Shivagiri Associates Vs. METSO Minerals India Pvt. Ltd. 2014 (123) CLA 246 (SC).

**SEBI LAWS - BY SHRI PRADEEP K. MITTAL-  
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- Irrespective of the mode of acquisition of shares by a person, the person is required to make disclosure under the Takeover Regulation as also the Insider Trading Regulation the moment the shares acquired are in excess of the prescribed

limits under the respective Regulations. Akriti Global Trader Ltd. Vs. SEBI 2014 (122) CLA 531 SAT.

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

- CBDT by an notification dated 28.11.2014 has extended the date of filing of income tax return and obtaining and furnishing of audit report in the state of Jammu and Kashmir to 31.03.2015.
- The CBDT has by notification dated 28.11.2014 has held that a resident, for tax determination of tax liability, who is undertaking or proposed to be undertaking transaction valuing Rs. 100 crores or more will be considered as applicant for the advance ruling under chapter XIX B of the Income Tax Act.
- The CBDT has issued a Press Release dated 07.11.2014 laying down the following instruction to its officers:-
  - <That in the case selected for scrutiny on the basis of AIR/CIB/26AS, enquiry should be limited to such information.
  - <Refund should generally be granted on the basis of evidence produced like original TDS certificate.
  - <NO coercive measure should be taken for recovery of demand without disposal of stay.
  - <Appeal should be filed on the basis of merits only and not on the basis of appeal effects.

- < In case of multi CCIT charges, the reference application to High court should be decided by at least two CCIT.
  - < Implementation of effective grievance redressal system and timelines for disposal of grievance application.
  - < High pitched assessment without application of mind should be avoided and a lengthy questionnaire and summon without application of mind should be avoided.
- The income tax department has designed a new utility to generate MIS for the auditable cases assessed under section 143(2), 144, and 147. The salient features of the utility are as follows:
    - < MIS report will be generated on the basis of date of uploading of scrutiny completed cases.
    - < The Report will be generated for less than or equal to six months only.
    - < The detailed report can be generated both in csv (excel) and pdf format. The summary report can be generated in pdf format only.

**INCOME TAX CASE LAWS -BY SHRI MANOJ KUMAR  
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- Kolkata ITAT held that instruction NO. 5/2014 dated 10.07.2014 revising monetary limit to 4 lakhs for filing appeal before ITAT is applicable to pending appeal also. **50 Taxmann.com 394 Kolkata ITAT, 2014.**



- The DHC on the issue of whether information regarding Income Tax particulars of any assessee can be sought under Right to Information Act, it held that

< Income-tax returns and information provided to Income Tax Authorities by assessee are confidential and not required to be placed in public domain; given nature of income-tax returns and information necessary to support same, it would be exempt under section 8(1)(j) of Right to Information Act, 2005 in respect of individual and unincorporated assessee

< In cases of widely held companies most information relating to their income and expenditure would be in public domain and it is only confidential information that would be exempt from disclosure under section 8(1)(d) of 2005 Act

< Information furnished by an assessee in income-tax return can be disclosed only where it is necessary to do in public interest and where such interest outweighs in importance, any possible harm or injury to assessee or any other third party, however, information furnished by corporate assessee that neither relates to another party nor is exempt under section 8(1)(d) of 2005 Act can be disclosed. **51 taxmann.com 548, Delhi, 2014**

- When developer has not performed or there is unwillingness to perform his part of contract, it cannot be concluded that there is transfer of capital asset in terms with section 2(47)(v) read with section 53A of Transfer of Property Act 1882, merely because assessee has entered into a development agreement or even handed over possession of land to developer during assessment year in question. **50 taxmann.com 178(Hyd-ITAT)**
- Where payment of PF and ESI could not be made on or before due date under relevant Acts but same was deposited on or before due date of filing of returns under section 139, said amount could not be disallowed. **363 ITR 307 (Rajasthan)/[2014]**
- Payment made by a race club for live telecast of horse races is not covered under section 9(1)(vi). A live T.V coverage of any event is a communication of visual images to the public and would fall within the definition of the word '*broadcast*' in section 2(dd). That apart section 13 of the Copyright Act does not contemplate broadcast as a work in which '*copyright*' subsists as the said section contemplates '*copyright*' to subsist in literary, dramatic, musical and artistic work, cinematograph films and sound recording. A reading of section 14 would reveal that '*copyright*' means exclusive right to reproduce, issue copies, translate, adapt etc. of a work which is already existing and said amount, as such not being royalty., TDS was not required to be deducted.

**CIT vs. Delhi Race Club(1940) ltd 51 taxmann.com 550(Delhi).**

- One time expenditure incurred by assessee for club membership fee is allowable as business expenditure and expenditure incurred on obtaining ISO 9002 Certificate is to be allowed as revenue expenditure. **50 taxmann.com 395(Punjab and Haryana)**
- Whether, where assessee had suppressed sales and had also suppressed expenses and Assessing Officer, had rejected books of account of assessee, estimation of gross profits for both years at 20 per cent by Tribunal as against 40 per cent made by Assessing Officer on unaccounted sales was justified as there was no perversity pointed out in approach adopted by Tribunal. **CIT vs. Samay Tiles Ltd 50 taxmann.com 332 (Gujarat)**
- Whether where assessee was not a credit co-operative bank but a credit co-operative society, its claim for deduction under section 80P(2)(a)(i) could not be rejected by invoking exclusion clause of sub-section (4) of section 80P, Circular No. 133, dated 9-5-2007. **CIT vs. Jafari Momin Vikas Co-op. Credit Society Ltd 49 taxmann.com 571(Gujarat)**
- Search conducted at premises of assessee unearthed some documents which showed evasion of tax by assessee and it was discerned that assessee had not been

filing his return and even relevant books were not maintained - On basis of seized papers, summary of books and other transactions was prepared by investigating team - On confrontation, assessee admitted his undisclosed income under section 132(4) - Thereafter, books of account were prepared by assessee based on bank transactions, property deals, etc., and return was filed and assessee retracted from his earlier admission - Assessing Officer held that retraction without any cogent reason could not be accepted and he proceeded to make addition on basis of admission of assessee - Whether since Assessing Officer did not advance any cogent reason to reject reconciled Statement prepared by assessee, whole issue was to be restored to file of Assessing Officer. Once books of account of assessee have been prepared based mainly on bank entries and other details, same should be rejected only by cogent reasoning. **Moreshwar Mahadev Bhondve vs CIT, 50 Taxmann.com 453(Pune Tribunal)**

- Where assessee, a TPA, having collected amount of medical expenses billed by hospitals on insured persons from insurance companies, remitted same to hospitals, it not being a case of payment of technical fee, assessee was not required to deduct tax at source under section 194J while making said payments. **ACIT vs Health India TPA services Pvt Ltd 31 itr (trib) 407(Pune Tribunal)**

**INTERNATIONAL TAXATION CASE LAWS -BY SHRI  
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- The most controversial issue regarding applicability of transfer pricing provision under chapter X of the Income Tax Act, 1961, on issue of shares at a discount has been settled by holding that it is not applicable as the jurisdiction to apply Chapter-X of the Act would occasion only when income arises out of International Transaction and such income was chargeable to tax under the Act. *Vodafone India Services (P.) Ltd. v. Union of India* [2014] 50 taxmann.com 300 (Bombay) and *Shell India Markets Pvt Ltd* 51 taxmann.com 519 Bombay, 2014.

**CENTRAL EXCISE -BY SHRI PRADEEP K. MITTAL-  
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- The principle that remedy of appeal for a citizen should not be made extremely costly nor it should be kept beyond the reach of the assessee. In case the Appellant is called upon to deposit the entire amount of duty and penalty especially when the appellant has some prima-faice case, it will make the remedy of appeal sham and farce hence the Appellant be directed to pay only 50% of the amount of duty but the amount of interest and penalty be waived. *Patel Engineering Ltd. Vs. CCE* 2014 (35) STR 297 A.P.
- The cenvat credit of excise duty paid on MS Plates, Oxygen Gas, Acetyne Gas, MS Welding Electrodes, Aluminium Welding Wire and CI Welding Wire are eligible when used

for the manufacture/fabrication of plant and machinery. CCE Vs. Madras Aluminium Co. Ltd. 2008 (226) ELT 342 Madras.

- The Cenvat Credit on inputs cannot be disallowed on the ground that the inputs are not reflected in the private records/purchase register in the face of the fact that the Commissioner (Appeal) has given a finding that the input stands entered in the statutory records. The substantive right of credit in the absence of any allegations that the input not received or not duty paid or not used in the manufacture of dutiable finished products, cenvat credit cannot be disallowed. CCE Vs. Sethi Industrial Corporation 2014 (309) ELT 159.

**SERVICE TAX – BY SHRI PRADEEP K. MITTAL  
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- The “service” of private placement of shares, for and on behalf of the client, could be held to be “merchant banking service” and the party is liable to pay service tax w.e.f. August, 2002 onward. Triumph International Finance Ltd. Vs. CST 2014 (35) STR 335 Tribunal.
- When an elaborate note was prepared by the lower officer and the committee of Chief Commissioner merely signed the said note even without indicating the normal acceptance of proposal, there is no legal review and, therefore, the condition precedent have not been satisfied and the appeal filed by the Department is defective and consequently deserve rejection. Commissioner Vs. Japan Airlines International Company Ltd. 2014 (35) STR 358. Tribunal.

- Non-mentioning of Service Tax Registration number on the invoice cannot disentitle the assessee to avail cenvat credit on such invoices when the Appellant have produced ST 3 returns which bear registration number. The defect is curable defect and the cenvat credit of service tax cannot be denied. *Bharat Sanchar Nigam Limited Vs. Commissioner of Central Excise 2014 (35) STR 397. Tribunal.*
- When the liability towards service tax has been deposited with interest before the issue of Show Cause Notice and the Department fully informed, the Show Cause Notice issued proposing penalty issued after a year penalty not imposable. *BIPCO Industry Tools Pvt. Ltd. Vs. Commissioner of Central Excise 2014 (350) STR 394 Ahmedabad.*
- Cenvat Credit in respect of service tax paid on clearing charges paid to CHA, commission on export sale, material handling, terminal handling, bank commission, aviation and courier charges/services are permissible and, therefore, Cenvat Credit Is allowable . *JSW Steel Ltd. Vs. CCE 2014 (36) STR 801 (Tribunal).*
- When the duty paid invoice for availing the cenvat credit is in the name of HO and not in the name of factory, the cenvat credit is allowable since the credit is to the manufacturer and not to the co-factory since it is the HO who received the invoice towards purchase of input and paid service tax and the HO being the registered input service distributor, credit is permissible. *Moser Bare India Limited Vs. CCE 2014 (36) STR 815 (Tribunal) Delhi.*
- The Cenvat Credit in respect of outdoor catering service is allowable to a manufacturer so long as the cost of food provided to the workmen during lunch/dinner has not been

recovered from them. SRF Ltd. Vs. CCE 2014 (36) STR 830.

- Service Tax paid in respect of lift maintenance, maintenance office airconditioners, rent paid to cafeteria, sale of foreign currency and annual maintenance charges for airconditioners – all are pertained to the office and, therefore, cenvat credit of service tax paid on the above heads are allowable specially in the case of 100% EOU with software technology park of India. CCE Vs. Verizon Data Service India Pvt. Ltd. 2014 (36) STR 846 Tribunal.
- Demand has been confirmed on the ground/contentions, which have not been raised in the Show Cause Notice, order is not sustainable and is liable to be set-aside. DHL Logistics Pvt. Ltd., vs. CCE 2014 (36) STR 874.
- The activity of cutting, handling and transportation of sugar cane to the sugar factory by a person acting as agent on behalf of Cane Grover Farmers - such activity is exempt from payment of service tax in terms of Notification No.13/2003-ST unconditional stay is liable to be granted. Pravera Oostodva Vahtuk Majoor Sastha Pvt. Ltd. 2014 (36) STR 876.
- The rate of service tax as prevailing at the time of rendition of taxable service and not the rate of service tax as prevailing on the date of receipt of payment for providing such service is taxable. The taxable event is the date of providing service and not the date of receipt of payment. CCE Vs. Lea Associates South Asia Pvt.Ltd. 2014 (36) STR 909.



- The activity such as site formation, site clearance, excavation, earth moving and demolition services carried out for the purpose of construction of godown for the Haryana State Cooperative Supply and Marketing Federation Ltd. and Haryana Seed Development Corporation are activities which prima facie commercial, the Appellant was directed to deposit the entire amount of service tax. Kamra Construction Co. Vs. Commissioner, CCE 2014 (36) STR 917.
- The services which in the nature of providing consultancy or advices for improving the management of a business entity only will be covered by the definition and not executory type of responsibilities of management got done through another agency. For example collection of bad debts is a responsibility of a Management. If somebody is engaged for collecting bad debts the person engaged cannot be considered to be providing Management or Business Consultancy Services. Though the definition at Section [65\(65\)](#) includes any service in connection with management of any organization, the scope of the definition gets restricted to services in relation to consultancy as is evident from the name given to the service and commercial understanding of the expression Management or Business Consultancy. Deloitte Haskins & Sells Vs. CCE MANU/CS/0229/2014.

**COMPETITION LAWS- BY SHRI PRADEEP K. MITTAL-  
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- The Competition Commission has observed that as far as industrial plots are concerned, the Opposite party is present only in the city of Mohali. In the relevant geographical market of the State of Punjab, industrial plots through industrial parks are being offered by a number of other

developers like Alpha Group, Hampton, Hansa Group, Mahakali, Krishna Infrastructure, Silicon Construction, EMAAR MGF, VAR Realtors, PACL India Ltd., Malhotra, Land Developers etc. The presence of other players in the relevant market indicates that the informant had the option to switch to other players in the relevant geographic market. Prima facie, the Opposite Party does not appear to be in a dominant position in the relevant market, its conduct cannot be examined under the provisions of section 4 of the Act. Omh Value Services Ltd Vs. Janta Land Promoters Ltd MANU/CO/0088/2014.

- The Competition Commission, while noting that Clause 6.8 of the 'Agreement' (of M/s Jaiprakash Associates Ltd) provides that in case the consideration amount is decreased pursuant to alterations, the excess amounts, if any, paid by the applicant shall be refunded by the JIL/Company without interest but, from the above mentioned clauses it appears that allottee has no right whatsoever with regard to the plot for which he/she is paying consideration/amount time to time as per the 'Agreement', found prima-facie the conduct of the M/s Jaiprakash Associates Ltd in imposing the above mentioned unfair and one sided terms and conditions in the 'Agreement' appears to be abusive in terms of the provisions of section 4(2)(a)(i) of the Act. Moreover, the allegations and the facts of the instant case are akin to the earlier cases mentioned above in which the Commission has already ordered for investigation by the DG. Hence, the Competition Commission ordered for investigation by Director General. Aanchal Khetrupal Vs. Jaiprakash Associates Ltd MANU/CO/0079/2014.
- It is the case of the petitioner since one of its partners is son of a former Deputy Chief Minister of Tamil Nadu, with the change of regime in the State of Tamil Nadu, it has been

sidelined by the present Government and more particularly, it has been repeatedly discriminated in grant of Entertainment Tax exemption for movies produced by it. It has been submitted that vide Tamil Nadu government order G.O. (Standing) No. 72 dated 22.07.2006 all movies having Tamil names were exempted from payment of Entertainment Tax whereas, in spite of having Tamil names, the movies produced by the Informant were not considered for tax exemption which caused huge revenue loss to it. Also, this created a situation whereby the Informant is unable to compete with other cinema production houses that were granted entertainment tax exemptions. It may be observed that the services rendered by the Government in discharge of the sovereign functions of the State include maintenance of law & order, judiciary, collection of taxes, maintenance of military and international relations. As the impugned conduct of the Opposite Parties is relatable to collection of taxes-a sovereign function-the same does not fall within the purview of the Act and the Opposite Parties in discharge of such functions do not constitute 'enterprise' within the meaning of the term as given in section [2\(h\)](#) of the Act. Resultantly, the provisions of section [4](#) of the Act have no manner of application to the facts of the present case. The relief of compensation as sought for by the Informant is also beyond the powers of the Commission. Red Giant Movies Vs. Secretary to Government MANU/CO/0090/2014.

**FEMA LAWS - BY SHRI PRADEEP K. MITTAL -  
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**CIVIL LAW - BY SHRI PRAVEEN K. MITTAL -  
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- The Bombay High Court in the case of Alcom Electronics (P) Ltd Vs. Celem SA MANU/MH/1549/2014 has held that general resolution cannot be passed in favour of the Managing Director or Directors of the Company authorizing them to sign, verify and file the legal proceedings. Whenever company decides to file the legal proceedings, these must be deliberated by the Board of Directors and then Director of the company be authorized to file the legal proceedings.
- The Delhi High Court has held that the offences, which are non-compoundable, could be compounded and the FIR can be quashed on a petition U/s 482 of Cr.P.C. more particularly when the offences which are arising out of matrimonial dispute. Sandeep Rohilla Vs. Puja 2014 (213) DLT 591. Delhi.
- In the suit for specific performance of an agreement in relation to immovable property, the period of limitation shall be three years, which shall be reckoned from the date fixed for performance and in case no particular day is affixed, then the limitation shall be counted from the performance is either specifically or impliedly denied. Normally, the contract relating to immovable property, time is not held to be essence of the contract unless such intention can be inferred either expressly from the terms of contract or impliedly from intention of the parties. Suunil Arora Vs. V.K. Wadhwa 2014 (213) DLT 557. Delhi
- When the purchaser has not taken steps to complete the sale within the agreed time, in such an event, the purchaser cannot take shelter that the time was not the essence of the contract more particularly in the case where the price of

immovable property has gone up substantially. Ravindra Nath Sawhney Vs. Poddar Construction Co. Pvt. Ltd. 2014 (211) DLT 561. Delhi.

- A contract will be held to be vague and not enforceable in case there is no mechanism as to how the market price shall be determined. In case the contract, though not voidable, gives the Plaintiff unfair advantage over the Defendant, decree for specific performance cannot be granted to the Plaintiff. Shikha Mishra Vs. S. Krishnamoorthy 2014 (213) DLT 356. Delhi.
- So long as the cheque has been signed by the drawer even if the name, figure and the date are written with different ink, that is not a material alteration, the holder of the cheque is entitled to file a criminal complaint U/s 138 of NI Act. In case the signature does not tally with the normal signature of the maker, it will amount to material alteration. A.K.Banerjee Vs. State 2014 (214) DLT 325.
- In order to determine territorial jurisdiction, the facts pleaded in the jurisdiction clause of the plaint must be seen without adjudicating the correctness of the same on an application under Order 7 Rule 11 of CPC. Mere location of registered office of the Company at a particular place does not confer the cause of action for the person to enable him to file a suit for recovery of money unless some material decision has been taken at the office of the Respondent. Shristi Udaipur Hotel and Resorts Pvt. Ltd. Vs. HUDCO 2014 (210) DLT 198.
- In case the amount covered under a cheque has become barred by time, complaint U/s 138 of NI act shall not be maintainable for enforcing the time barred debt unless the

liability has been admitted during the period of three years in accordance with the provisions of Section 18 of Limitation Act. *Manjeet Singh Vs. S.K.Mehta* 2014 (214) DLT 376.

- The litigant should not suffer due to lapses on the part of their Advocate. In case the amendment sought to be made is within the period of limitation prescribed under the Limitation Act, there should not be any impediment in allowing the application under Order 6 Rule 17 for seeking amendment of the plaint. *Sumitra Parashar Vs. Raj Rani* 2014 (213) DIT 381 DB.
- Strict provisions of CPC and the Evidence Act does not apply to the Arbitration proceedings. Once the award has been made and it has attained finality, the award is liable to be enforced under CPC in the same manner as if it was the decree of the Court. *Mahanagar Telephone Nigam Limited Vs. Applied Electronics Ltd.* 2014 (213) DLT 434 Delhi DB.

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

- The Award of the Arbitrator can be set-aside only when erroneous on facts or patently illegal or in contravention of the provisions of any act. *Swan Gold Mining Limited Vs. Hindustan Copper Ltd.* 2014 (1220 CLA 444. SC.
- It cannot always be said that in case the contract is void-ab-initio, the Court exercising the power U/s 8 and 11 of the Arbitration and Conciliation Act, 1996 cannot refer the dispute of arbitration and cannot appoint the sole Arbitrator. *Swiss Timings Vs. Organizing Committee Commonwealth Games 2010 Delhi* 2014 (121) CLA 171 SC.

- The Arbitrator cannot ignore express prohibition contained in the agreement as the Arbitrator is the creator of agreement. National Highway Authority of India Vs. HCC Limited 2014 (211) DLT 656.
- In case there is clause in the contract, which provides for “accepted matters” the same cannot be the subject matter of arbitration by the Arbitrator. In case the award has been made by the Arbitrator on a non-arbitral issue despite objection having been raised by the party, the award is bad in law and is liable to be quashed. Harsha Constructions Vs. Union of India 2014 (123) CLA 236 (SC).

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