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

- The Delhi High Court, while dealing with the issue of grant bail, has observed that the legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the Court dealing with the grant of bail can only be satisfied as to whether there is a genuine case against the accused if the prosecution will be able to produce prima facie evidence in support of the charge in the case of Gautam Khaitan Vs. Enforcement Directorate MANU/DE/3127/2014.
- The Gujarat High Court in Rakesh Makekchand Kothari MANU/GJ/0008/2015 has observed that the "proceeds of crime" is defined in Section 2[u], which means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property as defined under Section 2[v] of the P.M.L. Act and activity relating to schedule offence or value of any property and scheduled offence is defined under Section 2[y] which after amendment Act 2 of 2013 remained all those offences specified under part A of the schedule since part B is omitted and part A is substituted accordingly by shifting offences in Part B enblock to Part A.
- The AP High Court in the case of P Trivikrama Prasad Vs. Enforcement Directorate MANU/AP/1628/2014 has observed that "prosecuting for offence of money Laundering requires a full fledged trial and takes considerable time. In the meantime, unless the property is attached, the person is entitled to deal with the property. It is possible for the person to completely dispose off the properties which are acquired by committing crime of money laundering, and also can conceal or deal with such property, which would ultimately frustrate the proceedings for confiscation under the Act. The scheme of the Act would bring out that if the Enforcement Directorate has reason to believe that the property in possession of a person against whom crime is already registered is acquired as a result of proceeds of crime and he has reason to believe that there is possibility to conceal or transfer or deal with in any manner which may result in frustrating the proceedings relating to confiscation of such proceeds of crime, he can provisionally attach the property. The Enforcement Directorate passes an order of provisional attachment under Section 5(1) and to place the matter before the Adjudicating Authority. Provisional attachment would only disable the person charged from dealing with the property. He is not dispossessed from the property till a decision is made by the adjudicating authority under Section 8(2). Confiscation would arise only after the person is convicted of crime under the Act.

FOREIGN EXCHANGE REGULATION ACT:- BY SHRI PRADEEP K. MITTAL-9811044365

- The Delhi High Court in the case of Zerox Modi Corp Ld Vs. Special Director MANU/DE/0110/2015 has set aside the Appellate Order of Appellate Tribunal imposing penalty. It appears that the appellants may have been penalized on account of a highly belated inquiry initiated by the ED, and with passage of time the appellants may not have preserved the original documents. In Vipin Gupta (supra) , the Court observed that the noticee could not have been expected to retain the proof of all remittances for over six years. The explanation given by it for not being able to immediately furnish the exchange control copies of the Bill of Entries was bonafide. However, the same does not detract from the fact that notices have been issued belatedly - even though there is no period of limitation prescribed therefor. For such delays, the noticee cannot be made to suffer and the circumstance pleaded by the noticee that the documents have not been preserved or are not available would have to be given due weightage.

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

- The Supreme Court in the case of E Bapanaih Vs. K S Raju (who was promoter of Nagarjuna finance Limited) set aside order passed by the Division Bench of the High Court whereby the Division Bench erroneously set aside the finding and sentence awarded by the learned single Judge against K.S. Raju since K.S. Raju wilfully disobeyed the order of CLB and breached the undertaking given to CLB to make payment to the Appellant under the Scheme approved by the CLB. The Supreme Court gave time of two months to Mr K S Raju to make payment. MANU/SC/1001/2014.
- The scheme of arrangement is found to be in the interest of the public and the shareholders and the interest of the workman is also protected. There is also no attempt to defeat any provision of law with regard to pending of future prosecutions or liabilities. There is also no escaping of the liability with regard to the disputed creditors in case they are found to be true. The scheme deserves to be sanctioned. Satyam Computer Services Ltd. In re. (2014) 123 CLA 411 (AP).
- The Application for restoration of name of the company struck off at its own request under an exit scheme cannot be entertained under Sub-Section (6) of Section 560 of the Companies Act, 1956. Pramod Kumar Sharma Vs. Registrar of Companies, (2014) 123 CLA 553 (Guj).

- The company Law Board is entitled hear to an application under Section 340 Cr PC for the offence of perjury, if in the application, there are prima-facie allegation that the opposite party has filed forged and fabricated documents on a petition pending before CLB. Arun Dhawan Vs. Lokesh Dhawan 2015 (216) DLT 533. DHC
- To prosecute a person for offence punishable under Section 629(A) of the Companies Act for violation of Section 100 Companies Act, 1956, neither any consent nor any sanction from the Central Government is required. However, if on the administrative side, permission is obtained from the Central Government to launch prosecution and the period undergone for obtaining such permission, is not liable to be excluded for the purpose of calculation of time to decide as to whether the complaint of ROC is barred by time or not? Brajesh Sharma Vs. M O Ry. MANU/TN/2536/2014 Madras High Court.
- The Regional Director, North, in their Affidavit filed in a petition for sanction of “Scheme of Arrangement” (i.e. de-merger) also stipulated that the company shall have to follow Section 2(19AA) of Income Tax, 1961. Therefore, the while drafting “Scheme of Arrangement” care must be taken that the Scheme shall be in accordance with Section 2(19AA) as held by the Delhi High Court. R E Rogers India (P) Ltd MANU/DE/2688/2014.
- The Division Bench of Calcutta High Court in the case of Sudhir Rai Vs. ROC MANU/WB/0624/2014 was dealing with a case where ROC has issued Show Cause Notice for violation of Section 295 and 299 of the Companies Act, 1956. The Court observed “ With regard to the other batch of notices complaining about irregularities in loans and/or inter-corporate deposits, we feel, the allegations were serious in nature. The appellants must make good the loss that the company suffered. They must either recover and/or deposit the amounts irregularly lent and advanced to various companies and/or individuals referred to above on or before March 31, 2015 and in default, the authority would be entitled to proceed against them. In case such deposits are recovered and/or made and the appellants pay Rs. 5,000 each as fine on that count within the time stipulated above, the Registrar would be restrained from proceeding in respect of the violation under Section 209(1) and 292(1)(e), failing which the authority would be at liberty to proceed accordingly.”

**CORPORATE LAWS - BY SHRI PRADEEP K. MITTAL-
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- While petition for winding can be dismissed on its own merits by the High Court if it feels there is a bona fide dispute and it is not open to it to refer

parties to arbitration on an application made under Section 8 of the Arbitration and Conciliation Act, merely because of debt is disputed. *Empee Sugars & Chemicals Ltd. Vs. Paharpur Cooling Towers Ltd.* (2014) 123 CLA 406 (AP).

- It is nowhere provided that notice under Section 138 of Negotiable Instruments Act should be sent by “POST” rather presumption is that notice is dispatched with correct address, same will be treated as “duly served” unless the addressee proves that it was not actually served and burden of proving the same is on the addressee. *Vijay Cable Industries, Vs. Reliance Industries Ltd.* 215 (2014) DLT 554.
- It is mandatory to make averment in the complaint to the effect that the accused no. 5 was in charge of and responsible to the accused no. 1 for the conduct of its business. In the absence of said mandatory averment in the complaint, the question of proceeding against the accused no. 5, did not at all arise. *State of Goa Vs. Shivani Laboratories*, MANU/MH/2243/2014. Bombay High court at Goa.
- Where original purchase order stands completely novated, and the court holds there is a substantial and tangible defence raised involving contentious factual and legal issues which are to be adjudicated by a civil court, the winding up petition under clause (e) of Section 433 is not maintainable and the parties are to be directed to approach the competent civil court. *ETA Engineering (P) Ltd. Vs. Texmaco Rail & Engineering Ltd.* (2014) 123 CLA 464 (Mad).
- When Stamp Paper could be used and the refund of Stamp duty is sought from the Govt Authorities, the limitation of period of six months shall be counted from the date of accrual of cause of action and not from the date of purchase of stamp papers. *National Investor Forum Vs. Goldren Forests India Ltd* 2015 (216) DLT 574 (Delhi DB).
- All partners of the partnership firm cannot be automatically liable for offence of dishonor of cheque because of Section 25 of Partnership Act. The role of partner (sought to be implicated) has to be established in the commission of offence and cannot be made liable merely because he is a partner of the partnership firm who had issued a cheque which was dishonoured. *SAIL Vs. State* 2015(21[^]) DLT 73.

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

- CBDT issued instruction dated 06.01.2005 to observe every Wednesday as Public Grievance Day from 10AM to 1 PM. During this time, any member from public can go and meet senior commissioner or chief commissioner even regarding his grievance.
- CBDT issued dated 09.01.2015 draft Income Computing and Accounting standard for public comment for the purpose of notification u/s 145(2) of the Income Tax Act, 1961.
- CBDT issued instruction no.1/2015 dated 13.01.2015 providing non processing of return filed u/s 143(1), if the case of the assessee has been selected under scrutiny u/s 143(2) of the Income Tax Act, 1961.
- CBDT issued circular no. 1/2015 providing for explanatory notes on provision of Finance ACT 2014
- CBDT issued instruction no. 3/2015 dated 19.01.2015 introducing rule 12CA providing for filling of statement of income distributed by business trust to its unit holder to be submitted to Principle commissioner or commissioner of Income tax by 30 of the November of Finance Year of the previous year during which income distributed.
- CBDT issued instruction 2/2015 dated 29.01.2015 directing all his field officer to accept the decision of Bombay High Court in the case of M/s Vodafone India Services Pvt Ltd treating premium on account of Share issue as a capital account transaction and was not liable to transfer pricing adjustments.
- Govt notified Sukanya Samriddhi Account Scheme for the purpose of deduction under section 80C.

**CASE LAWS AND INTERNATIONAL TAXATION -BY SHRI
MANOJ KUMAR MITTAL - 9810764620**

- Where assessee filed an appeal against assessment order on a particular issue, in view of fact that identical issue had been decided in assessee's favour in earlier assessment year, demand raised for relevant year was to be stayed till disposal of appeal by Commissioner (Appeals). 52 taxmann.com 93(Bom)
- The Tribunal held that no disallowance should be made under section 40(a) (ia) for TDS default in relation to amount paid during the year. It held that ITAT Special bench's decision in the case of Merilyn Shipping & Transports v. ADIT [2012] 20 taxmann.com 244 (Visakhapatnam) is binding on lower authorities until and unless the same is reversed by the Hon'ble jurisdictional High Court. 53 taxmann.com 534 (Hyderabad - Trib.), 2015
- Where funds utilized by assessee was mixed funds and, hence, interest paid on borrowed fund was also relatable to interest on investment made in tax free funds, interest expenditure relatable to investment in tax free funds was to be computed under provisions of Rule 8D(2)(ii) 53 taxmann.com 297 (Punjab & Haryana), 2015
- Where assessee had deducted and paid TDS on and before due date of filing its return of income, disallowance under section 40(a)(ia) could not be made and merely because assessee had not obtained approval of RBI to write off debts pertaining to foreign party, assessee's claim could not be disallowed. 35 ITR (T) 459 (Bangalore - Trib.)
- Even where assessee-company had paid interest on borrowed fund, deduction under section 24(b) could not be allowable as such provision is applicable only to self occupied properties. 53 taxmann.com 310 (Mumbai Tribunal), 2015
- Where in absence of any incriminating material found from the premises of the assessee during the course of search, statement of assessee recorded during the course of search u/s 132(4) of the Income Tax Act, 1961 does not have evidentiary value. 369 ITR 171(Andhra Pradesh)
- The assessee had deposited cash in excess of Rs 10 lakhs in his saving bank account but he had not filed return of income. The AO reopened the assessment of assessee, as he had reason to believe that there was an escapement of income of Rs 10 lakhs. The Tribunal held that the AO

proceeded on the fallacious assumption that bank deposits constituted undisclosed income and overlooked fact that the source of deposit need not necessarily be income of the assessee. 53 taxmann.com 366 (Delhi - Trib.),2015

- The correct interpretation of the proviso to section 2(15) of the Act would be that it carves out an exception from the charitable purpose of advancement of any other object of general public utility and that exception is limited to activities in the nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business for a cess or fee or any other consideration. In both the activities, in the nature of trade, commerce or business or the activity of rendering any service in relation to any trade, commerce or business, the dominant and the prime objective has to be seen. If the dominant and prime objective of the institution, which claims to have been established for charitable purposes, is profit making, whether its activities are directly in the nature of trade, commerce or business or indirectly in the rendering of any service in relation to any trade, commerce or business, then it would not be entitled to claim its object to be a 'charitable purpose'. On the flip side, where an institution is not driven primarily by a desire or motive to earn profits, but to do charity through the advancement of an object of general public utility, it cannot but be regarded as an institution established for charitable purposes. 53 taxmann.com 404 (Delhi),2015
- Assessee, engaged in construction of roads, was not required to deduct tax at source under section 194C while making payments to casual labourers working under its direct control on daily wages basis. 53 taxmann.com 315 (Pune - Trib.), 2015
- CIT(A) can enhance tax liability in an appeal preferred by assessee after issuing show cause notice to assessee. 52 taxmann.com 169 (Andhra Pradesh),2014
- Consideration paid by assessee-company, engaged in providing ILD services to its subscribers, to non-resident telecom operators, for provision of international carriage and connectivity services would fall within ambit of royalty under section 9(1)(vi). Under section 195 onus is upon assessee to determine that payments made by it do not involve element of income. 53 taxmann.com 441 (Bangalore - Trib.), 2015
- Where commission paid by resident assessee to non resident agent was not chargeable to tax in India, assessee was not liable to deduct tax at source on such payments. 53 taxmann.com 302, Chennai Tribunal

- An expense can't be disallowed on recommendations of TPO
 - In the instant case, TPO proposed transfer pricing adjustment with 'nil' ALP of the commission transaction on the ground that no evidence was furnished about any services being rendered by the foreign AE. Accordingly, AO passed the assessment order without any further enquiry.
 - The Tribunal held that the TPO was required to simply determine the ALP of the transaction under concern and it was AO's responsibility to decide about the deductibility of an expense under Section 37(1) of the Act. Therefore, the matter was remanded with an instruction that the Assessing Officer would decide the deductibility of the commission expense. 53 taxmann.com 531 (Delhi - Trib.),2015
- Average of price charged from unrelated party should be considered for benchmarking
 - When we consider the mandate of section 92C in conjunction with that of rule 10B, it transpires that if there is a single comparable uncontrolled transaction, then the price in such transaction is to be considered but if there are number of such comparable uncontrolled transactions, then the arithmetic mean of such prices charged or paid should be identified. Neither the Revenue can pick a single highest price from a number of comparable uncontrolled transactions, nor the assessee can argue for taking the lowest of such comparable uncontrolled transactions. It, therefore, follows that the average of the prices charged by the assessee from its non-AEs in the same quarter should be considered for identifying the benchmark price of the same product sold to AE in the same quarter. 53 taxmann.com 531 (Delhi - Trib.),2015

**CENTRAL EXCISE –BY SHRI PRADEEP K. MITTAL-
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- While considering the application for waiver of pre-deposit, the Tribunal has dealt with only issue of prima facie case of the Appellant, but, however, has not dealt with the financial hardship specially when documentary evidence has been placed by the Appellant, the Order of the Tribunal directing pre-deposit is liable to be set-aside and the application for waiver of pre-deposit has to be heard a fresh. Badrinarayan Alloys & Steel Ltd. Vs. Arijit Chakraborty 2015 (315) ELT 214 Kolkata High Court.

- Unless, the litigants is grossly negligent in pursuing the litigation and the delay is enormous, the litigant should not be made to suffer for any bona fide error of his Counsel. The Counsel, while noting the date, has noted a wrong date and, therefore, the appeal was heard in absence and decided ex-parte. Daulat Auto Engineering Industries Vs. Commissioner of Central Excise 2015(315) ELT 220 Punjab & Haryana.
- When the activities of packing and labeling does amount to manufacture though the Appellant has treated as a manufacturer and paid excise duty, no demand can be rased for wrong availment of Cenvat Credit on inputs - as it would amount to reversal of cenvat credit specially when the amount of duty paid is much more than the amount of Cenvat Credit availed. Perfochem India Pvt. Ltd. Vs. Commissioner of Central Excise 2015 (315) ELT 237 Tribunal.
- The Appellant is entitled to cenvat credit of service tax paid on cleaning service since to keep the factory cleaned is a statutory obligation u/s 11 of the Factories Act, 1948. The Commissioner (Appeal) denied the cenvat credit merely on the premise that some space is used by the technical and administrative staff, without finding the exact area, the appeal deserved to be allowed. Delhi Automotive Systems Pvt.Ltd. Vs. Commissioner of Central Excise 2015 (315) ELT 255.
- When the raw material has been received by the appellant and the same was used for manufacture of final product on which duty has been paid and monthly return has also been filed it is for the Department to establish their allegations that the duty paying document (i.e. invoice) under which the raw material has been received in the factory is fake and not a genuine document. It is the strict obligation of the Department to establish their charge of duty paying document being fake which they failed and hence the appeal is liable to be allowed. S.K.Foils Ltd. Vs. Commissioner of Central Excise 2015 (315) ELT 258.
- The cenvat credit on excise duty paid on acquisition of capital goods used for the generation of electricity is allowable since the electricity is captively used for manufacture of final products. CCE Vs. United Phosphorus Ltd 2015 (315) ELT 360 (Guj).
- If any point of law and fact could not be taken at the stage of adjudication, it does not mean that it can never be taken at the appellate stage if such point clinches the issue. Sri Balaji Service Station Vs. CESTAT 2015 (315) ELT 408 (AP).

- Cement and steel bars used for construction of silos for storing the cement bags. Storing facilities is essential and required for smooth functioning of factory.. The construction of the same is definitely for business activity and materials used in construction of same cannot be denied cenvat credit. Grasim Industries Ltd Vs. CCE 2015 (315) ELT 426. (Tri).
- Steel items used for fabrication of Coal Ground Hopper, Iron Ore Ground Hopper, Coal Crusher House, Conveyer System, Stock House, After Burning Chamber, Kiln Coller Transformer House are part of machinery and hence covered under the definition of capital goods. The department allegation that these are supporting structure is not legal and proper. CCE Vs. Hi Tech Power & Steel Ltd 2015 (315) ELT 428. (Tri).

**SERVICE TAX – BY SHRI PRADEEP K. MITTAL
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- The cenvat credit of service tax or excise duty can be availed by a person who is manufacturer of excisable goods and when the manufacturer is a job worker, the cenvat credit cannot be availed by the principal manufacturer or person who had supplied some raw materials. CCE Vs. Geno Pharmaceuticals Ltd 2015 (37) STR 136 Mumbai.
- When the services have been rendered to foreign service provider , demand of service tax cannot be raised towards processing of textile material for chemical wash by virtue of notification No.14/2004-ST. K G Denim Ltd Vs. CCE 2015(37) STR 140 (Tri).
- When the assessee is entitled to avail the cenvat credit, the cenvat credit can be utilized either for payment of excise duty on finished goods and/or service tax on providing/rendering taxable service by the very same assessee. CCE Vs. V Thangavel & Sons () Ltd 201% (37) STR 144 (Tri).
- When the construction services for the construction of factory building has been availed prior to 1.4.2011 (i.e. during the Feb 2010 to December, 2010) and payment also thereto, service tax paid on construction services is allowable. Further, construction activity in present case supports manufacture both directly or indirectly. ISMT Ltd Vs. CCE 201%(37) STR 148 (Tri).
- The cenvat credit of service tax paid on the services of (a) document processing charges of export related documents from the place of removal to

place of export and also (b) claiming rebate claims. Hindalco Industries Ltd Vs. CCE 2015 (37) STR 152 (Tri).

- For rendering repair, maintenance and management of old transformer, there are two agreement (i) for providing materials, component and parts and another for (ii) for repairs, the value of materials, components and parts cannot be included for the purpose of levy of service tax on “service portion”. CCE Vs. Goverdhan Transformer Udyog (P) Ltd 2015 (37) STR 161 (All.).
- The Tribunal, while hearing the application for waiver of pre-deposit, considered to remand the matter to the adjudicating authority, is entitled to direct for payment of pre-deposit of a part of the total amount especially when the conduct of the assessee has been very tardy and has been delaying the adjudicating of the SCN. Avava Global Connect Ltd Vs. UOI 2015 (37) STR 193 (Guj).
- In case of composite contract i.e. (a) for supply of transmission towers and (b) service contract for execution of transmission line – the department contention that the transmission towers got consumed in the process of erection and installation and, therefore, no sale of goods and hence value of transmission towers to be included in the total value and hence service tax leviable on entire value, not valid and acceptable. Service Tax payable only service portion. Gammon India Ltd Vs. CCE 2015 (37) STR 225 (Tri).
- In case of delay in payment of service tax or duty, the interest is required to be paid which could be paid either by way of cash or by way of debit to cenvat credit account maintained by the assessee. However, it cannot be argued that since there is a enough balance in the Cenvat Credit account all along and, therefore, no interest is payable due to delay in service tax or excise duty. CCE Vs. Toyo Engineering Cor. Ltd 2015 (37) STR 238 (Tri).
- When the issue is debatable, extended period of limitation cannot be invoked. Further order in original is beyond the terms of the show cause notice and hence Order is bad in law. Assessable is not entitled to cenvat credit of input service which pertains to only trading of goods and not manufacture and sale of finished goods. CCE Vs. Elder Pharmaceuticals Ltd 2015 (37) STR 241. (Tri).

CIVIL LAW - BY SHRI PRAVEEN K. MITTAL -9810826436

- A summary suit under Order 37, CPC the amount claimed is a debt or a liquidated demand of moneys arising on a written contract. Because it is only

a promise to pay which creates a liquidated demand or a debt. A simple document showing payment by the Plaintiff to the Defendant will not be a written contract as is contemplated by Order 37 CPC and hence summary suit will not be maintainable. Delhi Power Supply Company Ltd. Vs. Hindustan Vidyut Products Ltd. 216 (2015) DLT 181.

- The tenant cannot be heard to contend in Eviction Petition that the landlord seeking eviction of tenant from premises for starting his own business, lacks experience to start new business. If the Landlord has shown requirement for tenanted accommodation, this is sufficient to get eviction order passed against the tenant and in his favour landlord. Rais Main Vs Abdul Samad 215 (2014) DLT 558. DHC.
- The judgment on admission under Order 12 Rule 6 CPC is not matter of right but matter of discretion of court and empower court to pass decree when there is a clear, unequivocal, unambiguous and unconditional admission of defendant in respect of plaintiff's claim and rule is not indented to apply where serious questions of law to be determined. Inder Mohan Singh & Ors. Vs. Sube Singh 215 (2014) DLT 168. DHC.
- GPA and the Agreement to Sell is a genuine transaction, which cannot be faulted so as to deprive the petitioner the benefit of seeking conversion of the property in question from leasehold to freehold. The documents in question i.e. GPA and the Agreement to Sell though registered on 13.10.2011 relate back to 03.10.2011 when the same were executed and presented for registration, which is prior to 11.10.2011 when the judgment in Suraj Lamp & Industries Pvt. Ltd's case (supra) was pronounced. Even if the judgment Suraj Lamp & Industries Pvt. Ltd's case (supra) is taken in proper perspective, it cannot be deemed to have nullified all the genuine transactions which have been entered into between the two parties; that was neither the purpose of law nor of the Court. In terms of Section 47 of the Registration Act, 1908, purchase of the flat in question made through GPA and the Agreement to Sell executed on 3.10.2011, though registered on 13.10.2011, has to be treated as a genuine & valid transaction. Vasudha Gupta Vs. Delhi Development Authority & Anr. 215 (2014) DLT 711.
- The court cannot set aside ex-parte decree under Order XXXVII Rule 4 CPC in a routine and special circumstances are required to be established. However, the expression "special circumstances" mean that the Court has to balance the equities and while safeguarding the interest of the plaintiff, appropriate conditions can be laid down if the defendant makes out a debatable case which may prime facie show injustice if the ex-parte decree was not set aside. The ex-parte decree was set aside subject to certain

conditions. Mahesh Kumar Joshi Vs. Madan Singh Negi [Civil Appeal No. 450 of 2015 arising out of SLP (C) No.11191 of 2013].

- Under Order 7 Rule 11 CPC, plaint shall be rejected where suit appears from statement in plaint to be barred by any law – Court could not take into account any material beyond counter claims – Counter claims did not appear to be barred by any law from statements made therein. The limitation is otherwise involves mix question of fact and law. Far Pavilions Tours & Travels Private Limited Vs. Manish Pratik MANU/MH/2239/2014. Bombay High Court.
- The suit for recovery of money is a suit for recovery of money simplicitor. The plaintiff does not press the interim applications under Order 38 Rule 5 CPC (for securing of claim of plaintiff). Accordingly, there is no threat to the liquidation of the assets of the sick industrial company and hence no prior permission of BIFR is required under Section 22 of SICA. Kusum Products Ltd. Vs. Hitkari Industries Ltd. MANU/DE/3434/2014

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

- The provisions of Section 5 of Limitation Act seeking condonation of delay are not applicable to petition filed under Section 34 of Arbitration and Conciliation Act, 1996 while calculating period of limitation for filing of petition. In other words, the objection petition shall have to be filed within the limitation prescribed under Section 34 of Arbitration Act, 1996. M.P. State Co-op Oil Seed Growers Federation Vs. UOI 215 (2014) DLT 349.
- The Supreme Court in Associate Builders v. Delhi Development Authority MANU/SC/1076/2014 : 2014 (13) SCALE 226, has emphasised that under “public policy” test to an arbitration award, the court does not sit as a court of appeal and consequently errors of fact cannot be corrected. Thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid ground for setting aside Award. Once it is found that the arbitrators approach is not arbitrary or capricious, then the Arbitrator is the last word on facts."
- On a petition under Section 9 of Arbitration Act, 1996 for interim relief, relief can be against the party who is not a party to the petition but the said party is not total stranger to the dispute/agreement amongst the parties. Gatx India (p) Ltd Vs. Arshiya Rail Infrastructre Ltd .2015(216) DLT 20.DHC.

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