

# **PKMG LAW CHAMBERS**

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

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**FOREIGN EXCHANGE MANAGEMENT ACT- BY SHRI PRADEEP  
K MITTAL-9811044365**

- The Department had taken cognizance of the offence under Section 9(1)(d) read with Section 72 of the FERA under Section 49(3) and (4) of FEMA on 29.05.2002 on which date summon was also issued to the petitioner and the order imposing a penalty on the petitioner was passed on 28.06.2005. When the proceedings under the order completed under FEMA, then the appeal would have been preferred under Section 19 of the FEMA before the Special Director and no appeal lie before the Appellate Tribunal and hence order of Appellate Tribunal is liable to be set aside. Umed Singh Vs. Union of India MANU/DE/1752/2015.
- In a compliant under Section 138 of NI Act, a plea was taken that flow of funds was also hit by the provisions of Foreign Exchange Management Regulation, 2000 as there was no compliance. However, the High Court declined to quash the complaint of Section 138 of NI Act on the plea that permission could always be obtained subsequently and deeper scrutiny and examination, for the purpose of quashing of criminal complaint, is not permitted in exercise of powers under Section 482 of Cr PC. Ashesh Devendrabhai Vyas Vs. State

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

- When the Company is in liquidation, Official Liquidator sells the assets of the Company, the OL is a dealer in terms of Kerala General Sales Tax Act and the OL is bound to pay the sales tax in respect of the assets so sold of the Company in liquidation. Assistant Commissioner Vs. Hindustan Urban Infrastructure Ltd. 2015 (126) CLA 242 (SC).
- Where the Company is doing the business, paying its workers, discharge the liability towards statutory dues, Corporate Debt Restructuring scheme is in process and, therefore, keeping in mind the wishes of the shareholders, the winding up petition will not be maintainable and is liable to be dismissed. Citi Bank Vs. Moser Bear India Ltd. 2015 (126) CLA 259 Delhi High Court.
- In case of serious differences of opinion between two warring group of shareholders who are managing the Company, it would be appropriate to appoint administrator to participate in the Board meetings and also in discharge of the day-to-day working of the Company. N.S.R. Gastronomy (Marutius) LLc Vs. K.M.Vasideva Adiga 2015 (126) CLA 287 Karnatana.

- When the Company is prospering under the new management and is making considerable profits and the sales are also gradually rising showing substantial improvement in the working of the Company, the Company petition alleging oppression and mismanagement is liable to be dismissed. However, even if the charges of oppression and mismanagement has not been established, CLB, in exercise of powers U/s 402 of the Companies Act, is competent to pass suitable orders in the interest of the Company and its shareholders. Afzul Khan & Ors. Vs. Mehboob Pvt. Ltd. 2015 (120) CLA 313 CLB.
- In case the allotment of shares is in contravention of provisions of Articles of Association such allotment shall be quashed. In case the share certificates have not been issued to the Petitioner, new share certificates can be issued once it is established that the share certificates were allotted to the Petitioner and in case the original share certificates are not available, duplicate share certificates to be issued after complying with the procedural formalities. In the event of two warring groups who cannot see eye to eye each other, it is just and fair that the Respondent to buy shares of the Petitioner at a value to be determined by the independent valuer to be appointed by the CLB. Dr. Tapan K. Chakraborty Vs. VIP Apex Medical Centre Pvt. Ltd. 2015 (126) CLA 177 CLB.
- In the event of overwhelming majority of debenture holders have passed the Scheme under Section 391/394 of the Companies Act, 1956 during the meeting of the debenture holders and more particularly when the scheme does not provide for waiver of interest, the scheme is liable to be sanctioned and called in question on the objection of the minority debentures holders. Analog Financial Services Pvt. Ltd. 2015 (126) CLA (Madras).
 

<On a petition under Sec 397/398, where the respondent mismanaged respondent co's affairs & siphoned off funds for their personal benefit by entering into agreement for sale of co's assets despite SC's stay on such assets, the promoter had indulged in acts of mismanagement. Though the provisions of the SICA would prevail over the provisions of the Companies Act, it would not be appropriate to dismiss the petition on this ground alone". Thus, directs petitioner to seek permission/ approval of BIFR for further prosecution of present petition: Mumbai CLB. LSI-576-CLB-2015 (MUM)
- When it is impracticable to hold general meeting because there are no continuing directors and there is only one shareholder who ordinarily cannot hold meeting without approval of CLB, then any member or director can take recourse to Section 186 to call a meeting of the Company other than AGM. CLB can order the holding of such EGM by virtue of Section 186 but it cannot give any special direction for the appointment of directors because

EGM can take a decision with the powers it has. M/S Renaissance JMW Energy Ventures Ltd. VS. M/S Renaissance JMW Energy India Ltd. C.P. No. 01/186/2015, Order dated 11/06/2015( CLB, Delhi Bench)

- Under section 111A, the company is only limited to record the transfer and rectify the register accordingly. Registration of transfer of shares cannot be denied on the following grounds:
  - < It is not expected to dig deep into the validity of constitution of Board of Directors and other board processes. it must limit itself as to whether the documents placed before it for registering the transfer of shares are in compliance with the mandate of Section 108 or not.
  - < Status of the transferee company (whether it is a public or private co.) is not the concern of the public ltd company whose shares are transferred.
  - < Purchase of shares in tranches is not a violation of Sebi Takeover Code till the time no. of shares purchased are within the limits, if the company is aggrieved, it should approach the competent authority i.e Sebi and not implead before the CLB.
  - < There is no mandate in law to get the shares independently valued before transfer.
- Deletion of the share trading clause from the object clause does not mean a co. cannot purchase shares in normal course. Moreover allegation that the purchase of shares is hit by doctrine of ultra vires cannot be made on this ground. Tirupati Techno Projects Ltd. Vs. M/S Modi Spinning And Weaving Mills Co. Ltd. & Ors. C.P No.: 12/111/2007 & 17/111/2008, Order Dated 1/06/2015 (CLB, Delhi bench)
- In a family company on seeing a grievance of removal of director in a Company Petition u/s 397 & 398, Company Petition cannot be thrown out from the file of CLB saying it is a directorial complaint. If the issue of forgery is a subject matter in an earlier proceeding, the party cannot agitate over the issue of forgery in the later proceeding without obtaining permission in the earlier proceeding. When other issues are taken over along with forgery issues and if courts are in a position to de-alienate the forgery and other aspects, then court can safely decide the point ignoring the allegation of forgery. The proceeding U/S 340 Cr .PC shall not be taken on vague allegation and without support of a definite statement unless there is a statement on oath before the court of law, giving false statement, it will not fall within the definition of Section 195 of IPC. Shri Narottam Singh vs M/s

Notam India Private Limited & Others C.P No. 74(ND)/2009 ORDER DATED: 22/06/2015 (CLB, Delhi bench).

- Non applicability of Section 81 of Companies Act 1956 to closely held companies, doesn't mean that the directors have absolute freedom in the management of the affairs of the Company. In case of family Company, the proportionate right of the other family members in the company cannot be whittled down by AOA. It was also said that the Board, to beat one section of Shareholders, cannot take a route of preferential basis and allot shares disproportionate to the then shareholding existing in the Company. SHRI BHIKU RAM JAIN & OTHERS VS. BHARAT FOAM UDYOG (PVT.) LTD. & OTHERS. C.P. No. 29/2001, ORDER DATED 11/06/2015 (CLB, Delhi bench).
- In the absence of a loan being reflected in the Books of Accounts of the company, there can be no preferential allotment by way of conversion of loan into shares, under Section 81(3) of Companies Act, 1956. Such allotment is liable to be cancelled and such cancellation will not tantamount to reduction of capital pursuant to Section 100 Companies Act, 1956. Mohit Khullar & Ors. Vs. Svc Resources Ltd. & Ors. Svc Resources Ltd. & Ors. Vs. Ashok Banwarilal Gupta & Ors. C.P. No. 31/MB/2013 & 10/MB/2014, Order Dated: 4/06/2015 (CLB, Delhi bench)

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

**Notification, Circular and Press Release**

- CBDT vide press release dated 08.06.2015 clarifies Regarding Prosecution of Tax Evaders; Effective and Stringent Action only in known and big cases of Tax Evasion to Demonstrate to the Large Number of Compliant Tax Payers that the Tax Laws are just and Fair and to Encourage Voluntary Tax Compliance
- CBDT Notifies "Nature Of Business Relationship" That CA Can Have To Be Eligible To Act As "Authorized Representative"
- Section 288 regulates the appearance by "authorized representatives" before any income-tax authority or the Appellate Tribunal. Sub-clause (viii) of the Explanation below s. 288(2), as amended by the Finance Act 2015, provides that a chartered accountant is eligible to be an "authorized representative" provided he is not "a person who, whether directly or indirectly, has business

relationship with the assessee of such nature as may be prescribed”. The CBDT has now issued a Notification dated 24.06.2015 to insert Rule 51A and to define the nature of “business relationship” which is covered by sub-clause (viii) of Explanation below sub-section (2) of section 288 of the Act.

- The CBDT has issued an Instruction dated 19th June 2015 directing that all Commissioner of Income Tax (Appeals) should issue appellate orders within 15 days of the last hearing. It is stated that this directive shall also be applicable to orders passed by the CIT (Administration)/ CCIT as regards matters within their purview under varied Sections of Income Tax Act such as Sections 80G, 264, 263 or Orders under Rule 86 of Second Schedule and under other allied direct taxes. The CBDT has directed all officers to ensure strict compliance of the directive and has warned that any lapse on this account shall be viewed adversely.
- The CBDT has issued Circular No. 10/2015 dated 10.02.2015 to provide important clarifications on several controversial issues relating to the Rollback Provisions of Advance Pricing Agreement Scheme which were introduced in 2012 through insertion of sections 92CC and 92CD in the Income-tax Act, 1961 by the Finance Act, 2012
- The CBDT has issued Circular No. 11/2015 to point out that assessees who had paid wealth-tax on agricultural land as per the provisions of the Act as they existed prior to Finance Act 2013 are entitled to a refund in view of the amendment brought by the Finance Act 2013 w.e.f. 1.4.1993. However, as the time-limit for filing revised return or application for rectification for the purpose of claiming refund has expired in several cases, the CBDT has authorized Principal Commissioners/Commissioners of Wealth-tax to admit application for revision under section 25 of the Act from assessees seeking refund arising due to the aforesaid amendment, after the expiry of the period specified under the said section and to deal with it on merits as per law.
- The CBDT has issued a letter dated 1st June 2015 stating that grievances have been received by the Board from many taxpayers that in their cases the deductor has deducted tax at source from payments made to them in accordance with the provisions of Chapter XVII of the Income-tax Act but has failed to deposit the same into the Government. The CBDT has pointed out that under section 205 of the Act, the assessee shall not be called upon to pay the tax to the extent that tax has been deducted from the income. It has emphasized that the Act puts a bar on direct demand against the assessee in such cases and the demand on account of tax credit mismatch cannot be enforced coercively. The CBDT has asked all assessing officers not to put the

assesseees to any inconvenience on account of the default of tax info into the Government account by the deductor.

- The CBDT has issued Circular No. 9/2015 dated 9th June 2015 to deal with the issue of condonation of delay in filing refund claim and claim of carry forward of losses under section 119(2)(b) of the Income-tax Act. The said Circular contains containing comprehensive guidelines on the conditions for condonation and the procedure to be followed tor deciding such matters.
- The CBDT has issued a press release stating that the news in the media that the CBDT has told its officers to go beyond raids and searches to target tax evaders is not correct. It has been clarified that effective and stringent action will be taken only in known and big cases of tax evasion to demonstrate to the large number of compliant tax payers that the tax laws are just and fair and to encourage voluntary tax compliance
- The CBDT has addressed a letter dated 5th June 2015 expressing concern that the rectification applications u/s 154 filed by the taxpayers before the field officers are not being dealt with promptly. It is pointed out that the Citizen's Charter of the Department requires that applications for rectification are to be disposed of within two months from the end of the month in which application is received. The CBDT has directed that all rectification applications that were received up to 31" March 2015 should be disposed of on or before 20th June 2015. It I stated that the Income-tax Department is committed to prompt redressal of taxpayer grievances and all the officers of the Department are expected to take lead in fulfilling this commitment.

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

- There was a transfer of capital asset in the impugned assessment year as envisaged under section 2(47)(v) of the Act resulting in capital gain. Ld. CIT(A) fell into error in not appreciating the aforesaid facts. As far as the decisions relied upon by the learned A.R. were concerned, on careful analysis of the same, we are of the view that they do not apply to the facts of the present case as in those cases the unwillingness of the developer to perform his part of the contract was proved by the concerned assesseees by bringing evidence on record. Whereas in the facts of the present case, the assessee has failed to do so. On the contrary, the material on record demonstrated that developer was all along willing to perform his part of the contract. For the afore cited reasons, while agreeing with the view of the A.O. to the effect that there was a transfer of land by assessee to developer giving rise to capital gain in the impugned assessment year, the finding of the Ld. CIT(A) on this issue

was set aside. INCOME TAX OFFICER vs. B. MAHENDER REDDY, (2015) 44 CCH 0270 Hyd Trib

- In making a best judgment assessment, AO must not act dishonestly or vindictively or capriciously. He must make what he honestly believes to be a fair estimate of the proper figure of assessment and for this purpose he must be able to take into consideration, local knowledge, reputation of the assessee about his business, the previous history of the assessee or the similarly situated assessee. Thus, in a best judgment, even if, there is an element of guess work, it should not be a wild one, but shall have reasonable nexus to the available material and circumstances of each assessee. RAJESHINGH KHADAK BAHADUR vs. INCOME TAX OFFICER, (2015) 44 CCH 0264 AhdTrib
- Word ‘purchase’ used in sub-section (2) of section 54 is not restricted or confined to registered sale deed or even possession but has a wider connotation, thus where the assessee had made entered into construction linked payment plan for purchase of residential property with builder within two years for purchase of property assessee was entitled to claim exemption u/s 54, even when legal title in property was not passed or transferred to assessee within a period of two years from date of sale of the first property. CIT vs. KULDEEP SINGH, (2014) 226 TAXMAN 0133 (Delhi)
- Sec 254(2) restricting ITAT to grant stay beyond 365 days even if default is not attributable to assessee violates the non- discrimination clause of Article 14 of the Constitution of India. The said expression introduced by the Finance Act, 2008 is, therefore, struck down as being violative of Article 14 of the Constitution of India. Consequently, we hold that, where the delay in disposing of the appeal is not attributable to the assessee, the Tribunal has the power to grant extension of stay beyond 365 days in deserving cases. The writ petitions are allowed as above. Pepsi Foods Pvt. Ltd vs. ACIT, (2015) 119 DTR 0373 (Del)
- It is evident from the above satisfaction note that apart from saying that the documents belonged to the petitioner and that the Assessing Officer is satisfied that it is a fit case for issuance of a notice under Section 153C, there is nothing which would indicate as to how the presumptions which are to be normally raised as indicated above, have been rebutted by the Assessing Officer. Mere use or mention of the word “satisfaction” or the words “I am satisfied” in the order or the note would not meet the requirement of the concept of satisfaction as used in Section 153C of the said Act. The satisfaction note itself must display the reasons or basis for the conclusion that



the Assessing Officer of the searched person is satisfied that the seized documents belong to a person other than the searched person. We are afraid, that going through the contents of the satisfaction note, we are unable to discern any “satisfaction” of the kind required under Section 153C of the said Act. This being the position the very first step prior to the issuance of a notice under Section 153C of the said Act has not been fulfilled. Inasmuch as this condition precedent has not been met, the notices under Section 153C are liable to be quashed. It is ordered accordingly. The writ petitions were allowed. Pepsi Foods Pvt. Ltd vs. ACIT, 90 CCH 0059 Del. HC

### **Case Laws on Transfer Pricing**

- Aggregation of transactions is desirable and not merely permissible, if nature of transaction(s) taken as whole is so inter-related that it will be more reliable means of determining arm’s length consideration for controlled transactions. BAUSCH & LOMB INDIA PVT. LTD. vs. DCIT, (2015) 44 CCH 0242 Del.Trib
- Companies that are functionally different from assessee cannot be considered as comparable. XCHANGING TECHNOLOGY SERVICES INDIA PVT. LTD. vs. ACIT, (2015) 44 CCH 0203 DelTrib

### **CORPORATE LAWS –BY SHRI PRADEEP K. MITTAL-9811044365**

- Upon dishonor of cheque, while sending notice U/s 138 of NI Act, individual notice to the Directors are not necessary so long as the notice has been served upon the Company on the premise that once the notice has been served upon the Company it is only those directors who are in-charge and responsible are liable in the affairs of the Company and hence, such directors can always come to know of the service of the notice upon the Company. Krishna Texport and Capital Market Ltd. Vs. Illa A Agrawal 2015 (126) CLA 202 SC.
- When the Director/promoter/officers of the Company are sought to be summoned for the criminal acts of the Company, it is necessary that the Magistrate should record its satisfaction in the Order of summoning mentioning therein the role played by each of those persons – failing which the order of summoning is bad in law and the criminal proceedings are liable to be quashed. Sunil Bharati Mittal Vs. CBI 2015 (126) CLA 214 SC.
- In case, the post-summoning evidence has commenced before 01.04.2014, the Court conducting trial of the case for dishonor of cheque U/s 138 of NI Act shall not return the complaint for filing at the appropriate court having jurisdiction at a place where the bank of payer is located and shall be decided

the complaint on merits. Ultratech Cements Ltd. Vs. Rakesh Kumar Singh 2015 (126) CLA 137 SC.

- In case the arrears of income-tax are payable by a Public Limited Company, the provisions of Section 179 of the Income Tax Act, 1961 shall not be applicable as Section 179 provides for recovery of arrears of Income Tax so payable by the Private Limited from the Directors of such private limited company when such private limited is unable to pay or otherwise cannot be recovered from such private limited company. D.N.Patel Vs. CIT 2015 (126) CLA 35 (Gujarat).
- Mere breach of contract would not entitle the aggrieved party to file a Police Complaint alleging offence of cheating within the meaning of Section 420 of IPC. The offence of cheating would get attracted only when there was a dishonest intention from the beginning on the part of a party who has broken the contract to cheat the aggrieved party. The complaint is liable to be quashed at the threshold when there is nothing to show that there was any intention on the part of accused person to cheat the aggrieved party. Hence, the complaint is liable to be quashed by the High Court in exercise of inherent powers U/s 482 of Cr.P.C. Vesa Holiday Pvt. Ltd. Vs. State of Kerala 2015 (126) CLA 348.
- In the event a dormant Company revives its business with the dose of finances and also by issue of preference shares in accordance with the provisions of the Companies Act, SEBI Act and other compliances and also from time to time makes corporate announcement, consequently the share price of that Company are rising, the said price rise is a natural phenomena unless some evidence has been brought on record to show that there was a market manipulation. Suspension of trading in shares by the Bombay Stock Exchange is bad in law. 52Week Entertainment Ltd. Vs. BSE Limited 2015 (126) CLA 353 Securities Appellate Tribunal.
- When there are no objections to the scheme from the Income Tax Department or any other quarter, the Scheme of arrangement or compromise is liable to be sanctioned. Omkar Textile Mills (P) Ltd., In re (2015) 126 Corporate Law Advisor 280 (Guj).
- The scheme is liable to be sanctioned by way of demerger in which units are transferred on slump sale basis paying consideration to the Transferor Company and not to its shareholders and value of shares remains the same in the hands of the shareholders of the Transferor Company. As regards appointed date, any date can be chosen as administrative exigency requires. Omkar Textile Mills (P) Ltd., In re (2015) 126 Corporate Law Advisor 280 (Guj).

- Where the Respondent Company has been seriously disputing the quality of work executed by the Petitioner Company and the amounts claimed by it which are based on fabricated tax invoices, the same cannot be made basis by the High Court for exercising its discretionary jurisdiction for ordering winding up of the Respondent Company. Goutham enterprises Vs. ICATCH Communications India Ltd. (2015) 126 Corporate Law Advisor 297 (T& AP).
- Scheme of arrangement deserves to be sanctioned when Secured Debentureholders have accepted it and only sought rescheduling of the due dates and accepted compensation for delay in payment. Analog Financial Services (P.) Ltd., In re. (2015) 126 Corporate Law Advisor 26 (Mad).
- Annual Returns and Balance Sheets not filed for almost 16 years by the Petitioner Company. The primary responsibility for ensuring that proper returns and other statutory documents are filed, in terms of statutes and rules, remains that of management. Restoration of name in the Registrar of Companies maintained by Registrar of Companies allowed subject to cost. Panchem Hotels P. Ltd. Vs. Registrar of Companies, 220 (2015) DLT 443.

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

- While reducing the penalty, the Excise Tribunal must specify the reasons for such reduction and mere observation that the penalty is excessive is not enough more particularly when the Petitioner has committed breach of the undertaking given to the Supreme Court. CCE Vs. Diaseans India Ltd. 2015 (320) ELT 177 SC.
- The Order passed by the Statutory Authority should be supported by the reasons and the reference of grounds taken in the pleading are not substitute for the reasons to be recorded by such authority. Even if the order passed by the quasi judicial or even the administrative authority affecting the rights of the parties has been passed by such authorities, orders so passed affecting the right, interest and entitlement of the parties, must be speaking orders with valid and lawful reasons in support whereof which is mandate of principle of natural justice. B.Khokhani Vs. Commissioner of Customs 2015 (320) ELT 189 Madras.
- In the event the Petitioner has prima facie arguable case, the Petitioner cannot be saddled with the liability to make pre-deposit of money as a condition precedent for hearing of appeal otherwise the appellate remedy will be

illusory and the party will not be able to argue good case on merits in the absence of making pre-deposit which is a condition precedent. Provenance Foods Product Ltd. vs. Union of India 2015 (32) ELT 199 (Mumbai).

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

- The Appellant is constructing the shopping complex for Municipal Corporation and is contending that Municipal Corporation is not a commercial organization and, therefore is not liable to pay service tax. When the shops in the commercial complex are meant to be for commercial purpose and, therefore, it cannot be contended that since the Municipal Corporation is not doing any business and hence no Service Tax is payable on the shops/malls so got constructed by such Municipal Corporation and no prima facie case is made out by the Appellant Chaitanya Construction Vs. CCE 2015 (38) STR 1146 - Tri.
- The activity such as construction of cycle stand, canteen building, project office building, store shed, basement for sub-station, site office etc. fall within the purview of works contract service and, therefore, liable to service tax. ELIXIR Met Form Pvt. Ltd. Vs. CCE 2015 (38) STR 1173.
- In case a contract has been lawfully terminated and later on the very same contract has been awarded to the same party whose contract was earlier terminated, there is no bar in exercise of option for payment of service tax at a lower rate under Works Contract (Composition Scheme for Payment of Service Tax) Rules 2007. Even there is a delay in exercise of option and if the party has been paying service tax and if the scheme is reflected in ST-3 Return, the same is good enough when the Department has not prescribed any particular performa for making declaration. ABL Infrastructure (P) Ltd Vs. CCE 2015(38) STR 1185 (Tri).
- At the time of sale of vehicle by the dealer, if the handling charges have been recovered from the Purchaser which provide for sales service and such handling charges are part of assessable value on which Sales Tax has been paid, then, no service tax is payable by the dealer. Automotive Manufacturers (P) ltd Vs. CCE 2015(38) STR 1193 Tri.
- The assessee is rendering “Erection, Commissioning and Installation Service and has been raising for such service and paying service tax thereon but, at the same time, the assessee is also collecting charges for to and fro visit of engineers to the site of the project – no service tax is payable on the reimbursement of expenses for visit of engineers of service providers at the project site. Kirloskar Pneumatic Co Ltd Vs. CCe 2015(38) STR 1198 (Tri).

- The service of sales promotion and marketing activities falls within the definition of Business Auxiliary Services and taxable from 2003 onwards. The services rendered by foreign service provider to a party located in India – the party in India shall be held to be service provider and shall be liable to pay Service Tax and was required to declare the transaction in their ST-3 Return and the such in India is liable to pay Service Tax w.e.f. 18.04.2006 as deemed Service Provider. Tech Mahindra Limited Vs. CCE 2015 (38) STR 1200 (Tri).
- When the appellant is engaged in marketing of products in India of their principal based outside India, the remuneration has been received in foreign exchange and the party has sought refund of service tax paid on the contention that this transaction amounts to export of service – the same has been upheld and the appeal of the Department has been dismissed. CCE Vs. Bayer Material Science 2015(38) STR 1206 (Tri).
- The party is engaged in providing service of supervision of fabrication and erection of supporting structures and equipments – appellant is not providing any kind of advice or assistance to their client and hence the activity of appellant does not fall in the category of Management Consultancy Service and hence no Service Tax is payable. Poddar Alloys (P) Ltd Vs. CCE 2015 (38) STR 1208 (Tri).
- The Cenvat Credit is sought to be denied only on the ground that invoice is in the name of Financial Accounting Office but the service has been availed by another Department of the same assessee, the cenvat credit cannot be denied on this highly technical ground. Deloitte Haskins & Sells Vs. CCE 2015(38) STR 1220 (Tri).
- When excess amount of service tax has been adjusted towards the Service Tax liability of subsequent months, the same cannot be denied on the technical ground. Jibilant Organosys Ltd Vs. CCE 2015(38) STR 1230 (Tri).
- If the demand of service tax pertains to the period prior to 1.4.2011, the cenvat credit of “Rent-a-Cab” Service is allowable in view of the fact that the rule has been amended w.e.f. 1.4.2011 and likewise Cenvat on Air Travel Agent is also allowable. Innovasynth Technologies (I) Ltd Vs. CCE 2015 (38) STR 1232 (Tri).
- In case the lis/dispute has arisen prior to 06.08.2014 (when the law of making pre-deposit of 7.5% of the demand so confirmed), the Appellant, while filing an appeal before CESTAT, shall have the right to file an application seeking

stay against demand confirmed and the Appellant is not compulsorily required to pay 7.5% of the duty amount as a condition precedent for hearing of appeal. Jeevan Telecasting Corporation Ltd. Vs. CCE 2015 (38) STR 1126 Kerala.

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

- Admission made in the written statement cannot be permitted to be withdrawn by moving an application seeking amendment of the written statement by deleting the admission so made and also wanting to set up a new case altogether. Application seeking amendment is liable to be dismissed. Satish Kumar Vs. Telu Ram 2015 (220) DLT 522.
- While considering the application under Order 7 Rule 11 seeking rejection of plaint, the content of the plaint along with accompanying documents are only to be seen and the written statement and the documents accompanying the written statement have to be completely overlooked and ignored for the purpose of consideration as to whether plaint discloses the cause of action or not. Vikram Chandok Vs. Rashmi 2015 (220) DLT 597 DB.
- In a suit for specific performance, in relation to immovable property, it is not always necessary for the Court to grant relief of specific performance but it is purely discretion of the Court. The Court may at times grant money decree instead of specific performance and in that event also provided again, the relief of compensation has been specifically prayed for. The word ready and willing implies when the vendee is committed to carry out terms and conditions of the agreement and has adequate financial means. Prem Kumar Bansal Vs. Ambrish Garg 2015 (220) DLT (Delhi).
- Although, the present suit has been filed during the rehabilitation period i.e. 2008-2013-14 as sanctioned by the BIFR in respect of a Sick Company but, in view of the specific finding given by the BIFR, to the effect that the defendant company is no longer a sick unit and the BIFR has discharged it from the purview of the Act, 1985/BIFR, the suit filed by the plaintiff cannot be regarded as barred by the provision of Section 22 of SICA Act 1985 (Section 22 of SICA bar the continuation of suit when the reference is pending, or when the sanctioned scheme is under implementation) Raj Solvex Ltd Vs. Sudhir Agro Oil (P) Ltd MANU/RH/0828/2015.
- None has appeared on behalf of the defendants despite of service of summons under Order 37 CPC in a summary suit. Plaintiff had filed a misconceived application under Order XXXVII R- 3(4) CPC praying inter alia for issuing summons of judgment on the defendants. In the order dated 28.4.2015, the learned Joint Registrar had observed that no such application would lie when the defendants have not entered appearance. Therefore, judgment and decree

for money shall automatically lie and there is no need for any orders on application for issuance of summons of judgment. Dugar Growth Fund (P) Ltd Vs. Mahamaya Builders (P) Ltd MANU/DE/1521/2015.

- The Division Bench of Allahabad High Court has held that in view of the law settled by the Hon'ble Apex Court, there can be no dispute about the fact that after termination of a license, the licensor can bring a suit for mandatory injunction for possession within a reasonable time and if not brought within a reasonable time and has filed with unnecessary delay, a suit for possession will have to be filed and the court fees payable, would be under Section 7(v) of the Act. It is only where the suit is filed diligently within reasonable time after termination of license and an injunction suit for possession would be maintainable. Sudhir Bansal Vs. Girish Bansal MANU/UP/0526/2015.
- Only plaint and accompanying documents with the plaint are to be looked at and if no cause of action made out, only then plaint can be rejected. Vikram Chandok Vs. Rashmi Skadegaard & Anr. 220 (2015) DELHI LAW TIMES 597 (DB).
- In case Court is doubtful about issue of limitation or two views are possible, benefit would go in favour of plaintiff and the issue of limitation is to be postponed for determination after trial. Saranpal Kaur Anand Vs. Praduman Singh Chandok & Ors. 219 (2015) DLT 641.
- Individual notices under Section 138 of Negotiable Instruments Act are not required to be issued to Directors who are in-charge of affairs of the company and responsible for the affairs of the company in case of dishonor of cheque issued by the company. Kirshna Texport & Capital Markets Ltd. Vs. Ila A Agrawal and others (2015) 126 Corporate Law Advisor 202 (SC).
- If it is apparent on record from reading of plaint and documents that plaint does not disclose cause of action and the suit is evidently barred by law, then plaint is to be rejected. Saranpal Kaur Anand Vs. Praduman Singh Chandok & Ors. 219 (2015) DLT 641.
- At the stage of framing of Notice under Section 251, Cr. P.C., Trial Court is not expected to function like a post office and to mechanically frame notice and rather bound by law to apply its mind to find out whether prima facie case is made out against accused or not. Avinish Jain & Anr. Vs. State (NCT of Delhi) & Anr. 220 (2015) DLT 341.
- Court must not refuse bona fides, honest and necessary amendment but at the same time, Court should never permit mala fide, dishonest and unnecessary

amendment which may cause prejudice to other side which cannot be compensated adequately in terms of money. *Saranpal Kaur Anand Vs. Praduman Singh Chandok & Ors.* 219 (2015) DLT 641.

- If certain questions have been put in cross-examination and consequently no further questions were put, vested rights arise in favour of Petitioner and such rights cannot be defeated by recalling of witness for further cross-examination. There cannot be repeated opportunities for cross-examination to fill lacunae on account of non-cross examination. *Anil Prakash Kashav Vs. Radha Sethi*, 219 (2015) DLT 8 (CN).
- Judges or Bench of Judges should not only bring to bear unbiased mind when they deal with causes set down before them, but also appear to be unbiased. Mere strong expression about the likely outcome of case, insufficient to successfully allege bias. *All India Institute of Medical Sciences Vs. Prof. Kaushal K. Verma & Ors.* 220 (2015) DLT 446 (DB).

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

- On a petition U/s 11 of the Arbitration Act, 1996 for appointment of Arbitrator, the Court is duty bound to examine as to whether there exist arbitral dispute/enforceable claim between the parties to the Arbitration Agreement. Where the party has signed the no due certificate after receiving the money, he cannot allege that there is dispute which require settlement by way of arbitration. *KSS KSS IIPL Consortium Vs. GAIL India Ltd.* 2015 (126) CLA 140
- When the MOU has been signed and which provide for arbitration clause, though no formal agreement has been signed between the parties - subsequent to the signing of MOU, in future, if any dispute between the parties arises, the Arbitrator is liable to be appointed to adjudicate the claims and counter claims of the parties despite the fact that there has been no signing of formal agreement between the parties. *Ashapura Mine Chem Ltd. Vs. Gujarat Minerals Development Corporation Ltd.* 2015 (126) CLA 1 SC.
- Where the existence of a claim and denial thereof gives rise to a dispute, the same is required to be determined on the basis of what the parties had agreed upon as embodied in the terms of the contract, and the only for the purpose of a decision on the question of arbitrability and nothing beyond the issues raised in the proceeding are required to be considered. *KSS KSSIIPL Consorlium through its constituted Attorney Vs. Gail (India) Ltd.* (2015) 126 Corporate Law Advisor 140 (SC).



- Arbitration clause contained in an agreement/ memorandum of understanding is a standalone agreement. Ashapura Mine- Chem Ltd. Vs. Gujarat Mineral Development Corporation. (2015) 126 Corporate Law Advisor 1 (SC).
- Registered Office of the Respondent Company situated in Delhi from where the Purchase Order issued. Part of cause of action arose in Delhi and this court would have jurisdiction to entertain the petition under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of Arbitrator. Blue Star Limited Vs. Rockland Hospitals Limited 219 (2015) DLT 7A (CN).

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