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

- The Delhi High Court has held that it is settled principle of law that the provisions of law cannot be retrospectively applied, as Article 20(1) of the Constitution bars the ex-post facto penal laws and no person can be prosecuted for an alleged offence which occurred earlier, by applying the provisions of law which have come into force after the alleged offence. The entire basis of the ECIR has been the contents of the FIR filed by the CBI and since FIR stood quashed by the High Court of Uttarakhand and, therefore, ECIR cannot survive under the provisions of Money Laundering Act. The High Court quashed ECIR filed under Prevention of Money Laundering Act since the entire genesis of proceedings before the authorities under PML Act is FIR which already stood quashed. Arun Kumr Mishra Vs. Directorate of Enforcement. MANU/DE/1095/2015. Delhi High Court.

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

- In an arbitration proceedings , an award was passed against the company and the challenge to the said Award under Section 34 of Arbitration & Conciliation Act, 1996 was also dismissed and consequently, an amount of Rs.2.5 Crore became payable to the decree holder by the company. The decree holder has filed a petition under Section 237 of Companies Act, 1956 seeking directions for investigation into the affairs of the company alleging gross acts of financial mis-management, siphoning of funds and other acts of mis-feasance. The CLB has observed that the investigation cannot be ordered unless the losses are linked with fraud, mis-feasance and mis-management but, however, directed the ROC to carry out the scrutiny of Balance Sheet and take appropriate action against the company and its directors including filing of prosecution. Shree Seco (P) Ltd Vs. Laxman Kumar Sagar 2015(125) CLA 219 (CLB).

- CLB dismisses co.'s principal promoter's (respondent) application seeking dismissal of oppression/ mismanagement petition filed for violation & termination of Memorandum of Understanding ('MoU') entered into between parties; Rejects respondent's contention that the oppression/ mismanagement petition was not maintainable as MoU had arbitration clause which should have been invoked by the petitioners; Observes that respondent himself unilaterally terminated the agreement stating that it was not binding upon parties, holds that "it cannot be said that issue…has to be referred to arbitration as conceived in the MoU just by seeing that there is an arbitration

clause in an MoU that has not seen the light of the day"; Though agrees to respondent's contention that doctrine of severability applies to arbitration clause, holds that the doctrine comes into operation only when the agreement has come into effect; Concludes that "remedy available under section 397 and 398 is statutory remedy, unless the lis is strictly within arbitration clause, the court is under no obligation to refer the matter to arbitration": LSI-448-CLB 2015.CLB

- Although, U/s 111 (111A) of the Companies Act, 1956 no period of limitation is prescribed for approaching the CLB/NCLT, yet the CLB has held in the case of Bhupinder Rani Vs. S.N.Kannappa Automobiles that the provisions of Artile 137 of the Limitation Act shall apply and the petition is required to be filed within a period of three years from the date of accrual of cause of action. In other words, any petition filed beyond the period of three years is liable to be dismissed.

- The Delhi High Court quashed criminal complaint filed in November, 1999 by ROC against petitioners before ACCM, Tis Hazari Delhi, about the alleged non receipt of dividend by investors declared for 1995-96, u/s 205/205A of Companies Act, 1956, The Complaint was filed beyond limitation period of one year as prescribed under Section 468 of Cr PC that bars Courts from taking cognizance of complaints filed beyond limitation period as complaint was "hopelessly time barred". The ROC pleaded that complaint could only be filed after instruction/directions from Department of Company Affairs which were accorded only on January 31, 1999. The court observed that since ROC did not file any application for condonation of delay and without delay having been condone, the learned magistrate could not have taken any cognizance on the complaint of ROC. LSI-456-HC-2015 DELHI HC.

- When the Board of Directors of the Company has approved the transfer of shares recorded in the statutory register of the Company, the Company cannot be permitted to question such transfer after the expiry of 20 years on the contention that the Company did not possess the original share transfer deed. The cancellation of shares by the Company is held to be mala fide and oppressive of the rights of the Respondent Group. If there is no evidence about the service of notice of Board Meeting, the Petitioner cannot be removed from the Directorship of the Board on the pretext of non-attending three consecutive Board meetings. Surya Estate Pvt. Ltd. Vs. Satish Kumar Bharthi 2015 (125) CLA 361 Delhi.

- Further, when the shares were not offered to the Petitioner, being the existing shareholders, and due to allotment of shares, the shareholding of the petitioner

has been diluted and reduced, the allotment of shares made to the Respondent is illegal and is liable to be set-aside. Babu Khandelwal Vs. Andhra Ferro Alloys Ltd. 2015 (125) CLA 402 CLB.

- The Petitioner, despite having executed share transfer deed and received sale consideration for transfer of shares in favour of the Respondent, failed to prove that his name has been wrongly removed from the Register of Member and, therefore, not being a shareholder, is not entitled to file a petition U/s 397 for oppression and mis-management since they failed to qualify conditions laid down under Section 399 of the Companies Act, 1956. Mrs. Raju Grover Vs. Kalati Constructions Pvt.Ltd. 2015 (125) CLA 381 CLB.

- CLB dismisses listed company's petition filed u/s 58 & 59 of the Companies Act, 2013, alleging violation of SEBI Takeover Code by Respondent co for allegedly acquiring its shares in concert alongwith group cos. and subsequent non compliance with open offer provisions, rejects demand for declaring equity shares purchase as illegal/ liable for forfeiture; Accepts Respondent's contention with regard to CLB's lack of jurisdiction, observes that " it is only the SEBI who has domain to enquire/investigate as to whether the parties against whom the allegations have been made, acting in concert, have acquired the shares more than threshold limit prescribed under the provisions of the Takeover code.." ; On careful consideration of the legal position, CLB opines that while it can declare as 'void', an acquisition of shares which is "ex-facie" in violation of Takeover code, however as in the instant case where there is more than one acquirer and the allegation pertains to persons acting in concert violating the Takeover code, then co. may refuse share transfer registration only on the basis of the order of SEBI Adjudicating authority; Therefore holds appellant's appeal as 'pre-mature' and barred by provisions of Sec. 15Y & 20A of SEBI Act, 1992, relies on its observations in Kesha Alliances P. Ltd. and Ors. Vs Royal Holdings Services Ltd. & Ors.; CLB questions silence of petitioner for over 8 years while the co.'s board was aware of impugned share transactions from time to time, hence rules that principles of "waiver, acquiescence, estoppel and abandonment" would be attracted in present case:Mumbai CLB

The Order was passed by Shri Ashok Kumar Tripathi, Member (Judicial), CLB.

Senior Advocate Iqbal Chagla, Advocates Riaz Chagla, Zal Andharyujina, Hursh Meghani, Neerav Merchant, Bharat Merchant argued on behalf of appellant while respondents were represented by Advocate Rafeeq Peermohideen.

Section 15Y of SEBI Act states that no civil courts shall have jurisdiction to entertain any suit or proceedings for which an Adjudicating Officer is appointed or SAT is constituted, also states that no injunction shall be granted by any Court in respect of any action taken.

Section 20A of SEBI Act states that no order passed by SEBI or Adjudicating Officer under SEBI Act shall be appealable except as provided in sec. 20 and no civil court shall have jurisdiction in respect of any matter which the SEBI or the Adjudicating Officer is empowered under, SEBI Act to pass any order.

[LSI-459-CLB-2015-(MUM)]

- The CLB –Mumbai Bench, has vide order dated 09.03.2015 (CP No.07/2015) allowed the petition under Section 74(2) of Sardar Sarovar Nrmada Nigam Limited and has granted time beyond 31.3.2015 up to the time the Fixed Deposits is agreed with the FD Holders as per terms and conditions of the Agreement. In other words, the company has been allowed to pay as per time period agreed with the FD Holders.

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

- The Central Board of Direct Taxes (CBDT) notified **Notification 39 dated 13.04.2015** regarding CBDT doubles exemption limit of transport allowance from Rs.800 to Rs.1600 granted to an employee to meet his expenditure for the purpose of commuting between the place of his residence and the place of his duty and Transport allowance from Rs.1600 to Rs.3200 granted to an employee, who is blind or orthopedically handicapped with disability of lower extremities, to meet his expenditure for the purpose of commuting between the place of his residence and the place of his duty.

- The CBDT has issued an Instruction **dated 24th April 2015** stating that several Foreign Institutional Investors receiving income from transactions in securities claim such income as exempt from tax under the Income-tax Act, 1961('the Act') by availing benefit provided in the Double Taxation Avoidance Agreements ('DTAAs') signed between India and their respective countries of residence. The CBDT has directed that since the issue involved in such cases is limited, such claims should be decided expeditiously. It has directed that in all cases of Foreign Institutional Investors seeking treaty benefits under the provisions of respective DTAAs, decision may be taken on such claims within one month from the date such claim is filed.

- CBDT issued **circular no. 5/2015 dated 09.04.2015** that in view of the decision of **SC in the case of CIT vs. Prannoy Roy 309 ITR 231 (2009)** that interest under section 17B shall not be charged for default in furnishing late return of Wealth Tax on the amount of wealth tax paid before due date of filling of wealth tax return.

- The CBDT **vide circular no.6/2015 dated 09.04.2015** has clarified that in case of mutual fund under FMP, if there is a rollover of FMP beyond a period of thirty six months and redemption of units takes place after thirty six months, then gain will be counted as long term capital gain.

Finance bill as passed by Lok Sabha with Amendments

- On April 30, 2015, the Lok Sabha passed the Finance Bill. The Bill which was presented originally in the Lok Sabha on February 28, 2015 is not passed in its original shape. Various changes have been made in the Bill. New amendments are proposed, some proposed amendments are removed, so on and so forth. A snippets of all changes made in the Finance Bill, 2015 as passed by the Lok Sabha *viz-a-viz* the Finance Bill, 2015 as presented in the Lok Sabha are presented here.

MAT exemption to foreign companies

- The Finance Bill, 2015 presented originally proposed that long-term capital gains and short-term capital gains (on which STT is paid) arising to FIIs would be excluded from the chargeability of MAT. Further, expenditures, if any, debited to the profit and loss account, corresponding to such income would also be added back to the book profit for the purpose of computation of MAT.

- In case of *Timken Co., In re [2010] 193 Taxman 20* the Authority for Advance Ruling held that a foreign company was not liable to MAT as it had no 'physical presence' in India and it earned only exempted 'long-term capital gains'. However, contrary ruling was given in case of *Castleton Investment Ltd., In re [2012] 24 taxmann.com 150 (AAR – New Delhi),* wherein it was held that provisions of MAT would be equally applicable to a foreign company.

- Thus, the Finance Bill, 2015 proposed to provide relief from MAT only to FIIs without extending such relief to foreign companies. The foreign company would be liable to pay MAT on capital gains arising from transfer of securities and income arising from royalty, interest or FTS even if such income would

not be chargeable to tax or taxable at lower rate in India by virtue of applicable double taxation avoidance agreements ('DTAA')or any provision of the Income-Tax Act.

- The impact of such proposal would be that foreign companies would be liable to pay MAT even on that income which was exempt from tax by virtue of DTAAs or Income-tax Act.

- Therefore, the Finance Bill, 2015 as passed by Lok Sabha proposes to provide relief from MAT to foreign companies as well. Capital gains from transfer of securities, interest, royalty and FTS accruing or arising to foreign company has been proposed to be excluded from chargeability of MAT if tax payable on such income is less than 18.5%. Further, expenditures, if any, debited to the profit loss account, corresponding to such income shall also be added back to the book profit for the purpose of computation of MAT.

MAT exemption on notional gain arising on transfer of share of SPV

- The Finance (No. 2) Act, 2014 inserted clause (xvii) in Section 47 to provide that transfer of share of special purposes vehicle ('SPV') to a business trust in exchange of units allotted by that trust to the transferor shall not be regarded as transfer, thus, no capital gain would arise on such transaction.
- The Finance Bill, 2015 as passed by Lok Sabha proposes to exclude the following from the chargeability of MAT:
- notional gain resulting from transfer of shares of SPV to a business trust in exchange of units allotted by that trust;
- notional gain resulting from any change in carrying amount of said units; and
- actual gains from transfer of said units.
- A new clause is proposed to be inserted to re-compute the gains from transfer of said units (as referred to in point (c) above) which shall be added back for computation of MAT. It is proposed that the amount of gain from transfer of said units shall be computed by taking into account the cost of shares exchanged with units or the carrying amount of the shares at time of exchange where such shares are carried at a value other than the cost through profit & loss account.
- Accordingly, notional loss arising from transfer of asset or notional loss arising from change in carrying amount of said units and actual loss from transfer of said units shall be added back to the book profit for the purpose of computation of MAT.
- A new clause is proposed to be inserted to re-compute the loss from transfer of said units which shall be reduced from the book profit. It is proposed that the amount of loss from transfer of said units shall be computed by taking into account the cost of shares exchanged with units or the carrying amount of the

shares at time of exchange where such shares are carried at a value other than the cost through profit & loss account.

Deduction under Section 80D in case of individual

- The Finance Bill, 2015 as presented originally omitted to propose amendment to clause (a) and clause (b) of sub-section (2) of Section 80D to enable assessee to claim deduction of Rs. 25,000 instead of Rs. 15,000. However, sub-section (4) of Section 80D was amended to allow deduction of Rs. 30,000 instead of Rs. 25,000 if individual or his family member or any of his parent is a senior citizen or very senior citizen.

- Accordingly, it is proposed in the Finance Bill, 2015 as passed by the Lok Sabha that the existing deduction of Rs. 15,000 shall be substituted with Rs. 25,000. The following table highlights the deduction available to an Individual under Section 80D:

- *Note:* Deduction for preventive health check-up of assessee, spouse, dependent children and parents shall not exceed in aggregate Rs 5,000.

- Maximum deduction, if individual or any member of his family or any of his parent is not senior or very senior citizen: Rs. 50,000 [(a) + (b)]
- Maximum deduction if individual or any member of his family is not senior citizen but any of his parent is a senior citizen or very senior citizen: Rs. 55,000 [(a) + (d)]
- Maximum deduction if individual or any member of his family and any of his parent is senior citizen or very senior citizen: Rs. 60,000 [(c) + (d)]

Residential Status of a Company

- The Finance Bill, 2015 as presented earlier proposed to amend Section 6 to provide that a company shall be said to be resident in India if its place of effective management, at any time in that year, is in India. In other words, the concept of Control or Management (wholly in India) is replaced with Place of Effective Management (at any time in India).

- The amendment proposed in the original Finance Bill, 2015 might have caused difficulty in establishing the place of effective management as a company might have place of effective management in more than one country at any point of time during the year.

- Thus, the Finance Bill, 2015 as passed by the Lok Sabha has proposed to omit the words 'at any time' which shall have effect that a company shall be deemed to be resident in India if its place of effective management is in India.

Filing of return is mandatory if assessee has foreign assets

- The Finance Bill, 2015 as passed by the Lok Sabha has proposed mandatory filing of return by a person, being a resident other than not ordinarily resident in India, who at any time during the previous year:
- holds, as a beneficial owner or otherwise, any asset (including financial interest in any entity) located outside India or has signing authority in any account located outside India; or
- is a beneficiary of any asset (including any financial interest in any entity) located outside India.
- However, filing of return shall not be mandatory under this proviso for an individual, being a beneficiary of any asset (including any financial interest in any entity) located outside India, if income arising from such an asset is includible in the income of the person who is beneficial owner of such an asset
  .
- The meaning of the 'beneficial owner' and 'beneficiary' has been proposed as under:
- '*Beneficial owner*' in respect of an asset means an individual who has provided, directly or indirectly, consideration for the asset for the immediate or future benefit, direct or indirect, of himself or any other person;
- '*Beneficiary*' in respect of an asset means an individual who derives benefit from the asset during the previous year and the consideration for such asset has been provided by any person other than such beneficiary.

Subsidies are no longer capital receipts

- There had been dispute between the revenue and the taxpayers about the treatment of the subsidy received from Government or any other authority. The issue whether subsidy shall be treated as capital receipt or revenue receipt became a debatable issue.
- Various Courts have pronounced on this issue taking into consideration the purpose and object for which the subsidy has been given, which are as follows:
- In case of *Sahney Steel & Press Works Ltd. v. CIT [1997] 94 Taxman 368 (SC)*, it was held by the Supreme Court that subsidy given to assessee by way

of refund of sales tax to enable the assessee to run the business more profitably is to be treated as revenue receipt.

- In case of *CIT v. Ponni Sugars & Chemicals Ltd. [2008] 174 Taxman 87 (SC)*, it was held by the Supreme Court that it is the object for which subsidy is given which determines nature of incentive subsidy and where subsidy is given to utilize it for repayment of term loans undertaken by assesse for setting-up new unit/expansion of existing business, it would be treated as capital receipt.

- In case of *CIT v. Reliance Industries Ltd. [2010] 8 taxmann.com 218 (Bom.)*, it was held by the Bombay High Court that subsidy in the form of sales tax incentive would be treated as capital receipt if it is given to set-up a new unit in a backward area to generate employment.

- To end the dispute, it is proposed to amend the definition of 'Income' under Section 2(24) in the Finance Bill, 2015 as passed by the Lok Sabha.

- A new sub-clause (xviii) is proposed to be inserted in Section 2(24) to provide that assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement (by whatever name called) by the Central Government or a State Government or any authority or body or agency in cash or kind to the assesse [other than one considered under *Explanation* 10 to Section 43(1)] would be included in assessee's income.

- Thus, any subsidy which is not reduced from the actual cost of the asset in view of provisions of *Explanation* 10 to Section 43(1) shall be taxable as revenue receipts of the assessee.

Bad debts could be claimed without writing off debt in books of account

- Bad Debts of a business are allowed as deductions under Section 36(1)(vii). The deduction is available in respect of any bad debt or part thereof which is written off as irrecoverable in the accounts of the assessee for the previous year.

- However, deduction is allowed subject to conditions laid down under section 36(2), *inter-alia*, debt should have been taken into account in computing the income of the previous year in which the amount of bad debt is written off or of an earlier previous year.

- Till Assessment Year 1988-89, there was no requirement of writing off of the bad debt in the books of account. From Assessment Year 1989-90, the law

was amended to provide for deduction in the year of write-off of the bad debt. So, the amendment made writing-off of bad-debts in books of account mandatory to claim deduction thereof.

- In view of current provisions, no deduction is allowed to an assessee if any income, not recorded in books of accounts but offered to tax as per Income Computation and Disclosure Standards, turns into bad-debts. In other words, assessee cannot write-off a debt which was not recorded in the books of account but was actually offered to tax. In this case, no deduction is allowable to assessee as debts are not written-off from books of accounts.

- In order to remove this anomaly, it is proposed in the Finance Bill, 2015 as passed by the Lok Sabha that bad-debts could be claimed without writing off in books of account if the amount of debt or part thereof has been taken into account in computing the income of the assessee of the previous year in which the amount of such debt or part thereof becomes irrecoverable or of an earlier previous year on the basis of income computation and disclosure standard notified under section 145(2) without recording the same in the accounts.

- Thus, Section 36(vii), once again, proposed to be amended to get back to original position (i.e., the position that stood till Assessment Year 1988-89) but to a limited extent.

Interest on loan taken for acquisition of an asset could only be capitalized till the asset is first put to use

- Currently, Section 36(1)(iii) allows deduction for interest paid in respect of capital borrowed for the purposes of the business or profession while computing the income from business or profession.

- However, any interest paid in respect of capital borrowed for acquisition of an asset for extension of existing business or profession (whether capitalized in the books of account or not) for any period beginning from the date on which the capital was borrowed for acquisition of the asset till the date on which such asset was first put to use, was not allowed as deduction.

- The Finance Bill, 2015 as passed by Lok Sabha proposes to remove this distinction in allowability of interest in case of existing business and in case of extension of existing business. It proposes to remove the words "for extension of existing business or profession" from proviso to Section 36(1)(iii). Thus, it is proposed that interest on borrowings used for acquisition of asset till the asset is put to use shall not be allowed as deduction in any case.

Determination of period of holding and cost of acquisition in case of shares acquired on redemption of GDRs

- Section 2(42A) of the Act is silent on the computation of period of holding in case of shares which are acquired on redemption of GDRs as referred to in Section 115AC(1)(b). Accordingly, the Finance Bill, 2015 as passed by the Lok Sabha proposes that the period of holding in this case shall be reckoned from the date on which a request for redemption is made by the assessee.

- In this case, the cost of acquisition shall be computed in accordance with sub-section (2ABB) proposed to be inserted in Section 49 by the Finance Bill, 2015 as passed by the Lok Sabha.

- It is proposed that cost of acquisition of shares acquired by a non-resident on redemption of GDRs shall be the price of such shares as prevailing on any recognized stock exchange on the date on which a request for redemption is made by the assessee.

Easing some conditions if investment fund is owned by Foreign Govt. or Central Bank

- An amendment was made in Finance Act (No. 2) 2014 to provide that income arising to Foreign Portfolio Investors ('FPIs') from transaction in securities will be treated as capital gains. However, the provisions of the Act have not been adequately amended to address the apprehension of the fund managers that their location in India would constitute business connection of offshore funds in India, resulting in a large number of offshore funds choosing to locate their investment manager outside India.

- In order to facilitate location of fund managers of off-shore funds in India Section 9A has been proposed in the Act in line with international best practices, to provided that location of funds manager shall not constitute business connection subject to certain conditions.

- The Finance Bill, 2015 as passed by the Lok Sabha proposes to withdraw following conditions in case of an investment fund set-up by the Government or Central Bank of a foreign State or a sovereign fund or any other notified fund:

- The fund has a minimum of 25 members who are, directly or indirectly, not connected persons;

- Any member of the fund along with the connected persons shall not have participation interest, directly or indirectly, in the fund exceeding 10%; and

- The aggregate participation interest, directly or indirectly, of ten or less members along with their connected persons in the fund, shall be less than 50%.

Rules shall be prescribed for the purpose of Section 9A

- It is proposed to insert sub-section (7A) in Section 9A that the provisions of this section shall be applied in accordance with such guidelines and in such manner as the Board may prescribe in this behalf
-

Amount paid for purchase of sugarcane allowed as deduction to the extent price fixed by the Government

- A new clause (xvii) is proposed to be inserted in Section 36(1) to provide that the amount of expenditure incurred by a co-operative society engaged in the business of manufacture of sugar for purchase of sugarcane could be allowed as deduction, however, the deduction couldn't exceed the price fixed or approved by the Government for sugarcane.

- In other words, a co-operative society engaged in the manufacture of sugar would be allowed as deduction towards purchase of sugarcane to the extent of lower of following:

- Actual purchase price of sugarcane, or

- Price of sugarcane fixed or approved by the Government

Meaning of 'Specified person' enlarged for purpose of Section 10(23EE)

- Under the provisions of Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012 notified by SEBI, the Clearing Corporations are mandated to establish a fund, called Core Settlement Guarantee Fund for each segment of each recognized stock exchange to guarantee the settlement of trades executed in respective segments of the exchange.

- Under the existing provisions, income by way of contributions to the Investor Protection Fund set- up by recognized stock exchanges in India, or by commodity exchanges in India or by a depository shall be exempt from taxation.

- On similar lines, it is proposed to exempt the income of the Core Settlement Guarantee Fund arising from contribution received and investment made by the fund and from the penalties imposed by the Clearing Corporation subject to similar conditions as provided in case of Investor Protection Fund set-up by a recognized stock exchange or a commodity exchange or a depository.

- However, where any amount standing to the credit of the Fund and not charged to income-tax during any previous year is shared, either wholly or in part with the specified person, the whole of the amount so shared shall be deemed to be the income of the previous year in which such amount is shared.

- It is proposed in the Finance Bill, 2015 as passed by the Lok Sabha to change the meaning of the 'specified person' which shall mean following:
- Any recognized clearing corporation which establishes and maintains the Core Settlement Guarantee Fund;

- Any recognized stock exchange being a shareholder in such recognized clearing corporation or a contribution to the Core Settlement Guarantee Fund; and

- Any clearing member contributing to the Core Settlement Guarantee Fund.

The Securities Contracts (Regulation) (Stock Exchanges And Clearing Corporations) Regulations, 2012 defines the following terms as under-

Clearing Corporations

- Clearing corporations, also known as 'Clearing houses', are entities that are established to undertake the activity of clearing and settlement of trades in securities/other instruments/products that are dealt with or traded on a recognized stock exchange. It is obligatory for stock exchanges to use the services of recognised clearing corporation(s) for clearing and settlement of its trades. However, clearing houses are required to take prior approval from SEBI before associating with stock exchanges to handle the confirmation, settlement and delivery of transactions.

Core Settlement Guarantee Fund:

- Clearing Corporations are required to establish a fund, called Core Settlement Guarantee Fund (Core SGF) for each segment of each recognized stock exchange to guarantee the settlement of trades executed in respective segments of the exchange. The fund shall be utilized to complete the settlement in the event of clearing member(s) failing to honour settlement obligation. Clearing Corporations must ensure that the corpus of the fund should be adequate to meet the settlement obligations arising on account of

failure of clearing member(s). The stock exchanges shall have to contribute 25 % of their total assets towards the core fund, while 50% is required to be contributed by the Clearing Corporation. Clearing members cannot contribute more than 25 % of the total fund size. Clearing Corporations must also periodically conduct stress test to ascertain the sufficiency of the corpus of the fund.

Additional Depreciation and Investment Allowance allowed to industries set-up in Bihar and West Bengal

- The Finance Bill, 2015 as presented on February 28, 2015 proposed to allow higher additional depreciation at the rate of 35% (instead of 20%) in respect of the actual cost of new machinery or plant acquired and installed by a manufacturing undertaking or enterprise set-up in the notified backward area of the State of Andhra Pradesh and the State of Telangana.

- This higher additional depreciation shall be available in respect of acquisition and installation of any new machinery or plant during the period between 01-04-2015 and 31-03-2020.

- Similarly, it is proposed to insert a new section 32AD to provide for an additional investment allowance of an amount equal to 15% of the cost of new asset acquired and installed by an assessee, if:

- it sets-up an undertaking or enterprise in any notified backward areas in the State of Andhra Pradesh and the State of Telangana; and

- the new assets are acquired and installed during the period between 01-04-2015 and 31-03-2020.

- The Finance Bill, 2015 as passed by the Lok Sabha proposes to extend the benefit of additional depreciation and investment allowance to the manufacturing undertaking or enterprise set-up in the notified backward area of State of Bihar and State of West Bengal as well.

CORPORATE LAWS –BY SHRI PRADEEP K. MITTAL-9811044365

- The Supreme Court has held that High Court cannot quash the criminal complaint in exercise of powers U/s 482 of Cr.P.C. when there are disputed questions of facts so as to come to a conclusion that the offence of dishonor of cheque is not made out or not. 2015 (125) CLA 333 (SC)

- The Ministry of Railways has written a letter for grant of permission for movement of imported coal from Vizag Port to the plant site at Tilda to the

Central Electricity Authority and CEA also recommended to the Railway Board. Later on, the Railways changed its mind and directed the change of port from Vizag to Western port especially when the petitioner has taken substantial steps for the purpose of import and coal and its haulage from Vizag Port. The letter of Ministry of Railways has been quashed by Delhi High Court. GMR Chhattisgarh Energy Ltd Vs. Union of India 2015(218) DLT 322. Delhi High Court.

- When a complaint under Section 138 of NI Act is filed for dishonor of cheque, it is mandatory that either Board resolution or Power of Attorney authorizing an employee who is signing and filing must be filed with the complaint and if a magistrate has issued taken cognizance of complaint and issuance summons to the persons who issued cheque, such course of action is bad in law in the absence of authorization. G Kamalkar Vs. Surana Securities Ltd 2015(125) CLA 150 SC.

- The Division Bench of Delhi High Court has held that Debt Recovery Tribunal has no powers to direct the bank to accept One Time Settlement. Further, after the secured creditor has taken action under Section 13(4) of Securitisation Act and the said order has been challenged by way of an appeal before the Debt Recovery Tribunal who has not interfered with the decreetal amount. On an appeal filed before the Debt Recovery Appellate Tribunal against the order of DRT, DRAT has no power to reduce the amount of pre-deposit (as a condition precedent for hearing an appeal) below the minimum prescribed under the law. Satnam Agri Products Ltd Vs. Union of India 2015(125) CLA 195 Delhi.

- In case, the reference under SICA is pending before the BIFR in respect of Sick Industrial Company, such company can convene an general meetings, appoint directors and transact other business in terms of Section 169, 171, 172 and 173 of Companies Act, 1956 so long as the management of such sick industrial company has not been taken over pursuant to sanction of Scheme of Revival or Rehabilitation. The CLB further held that removal of directors without compliance of the provisions of Section 284 of Companies Act, 1956 is bad in law. Vijay Julka Vs. Supriya Pharmaceuticals Ltd & others 2015 (125) CLA 249 (CLB).

- Where the prosecution has failed to prove that failure of the Director to submit the statement of affairs under sub-section (1) of the 454 of the Companies Act was without reasonable excuse, the Director has to be acquitted of the charge. Official Liquidator of Asup Synthetics & Chemicals Ltd. (2015) 125 CLA 3 (Bom).

- The Shareholders are free to convene a meeting, appoint Directors and pass resolutions and give effect to the same with due compliance of the provisions of Sections 169, 171, 172 and 173 where the proceedings are still pending before the Board for Industrial and Financial Reconstruction and provisions of sub-section (2) of Section 22 of the Sick Industrial Companies (Special Provisions) Act (SICA) have not come into force since the management of the Sick Industrial Company has not been taken over or changed in pursuance of any scheme for change of management under sub-section(1) of Section 18 of the SICA. Vijay Julka Vs. Supriya Pharmaceuticals Ltd. and Others (2015) 125 CLA 249 (CLB).

CENTRAL EXCISE –BY SHRI PRADEEP K. MITTAL-9811044365

- The Supreme Court held that when there is a difference of opinion among the members of two members bench and the matter is referred to the third member for his opinion, no penalty is imposable on the assessee in case the third member is of the view that the duty is payable as there had been bonafide doubt the payment of duty. Surana Industries Ltd Vs. CCE 2015(318) ELT 367 SC.

- The Gujarat High Court has held that thought interim orders have no precedentiary value yet, as a good governance, the interim passed on a similar issue, is required to be followed and similar relief be granted to the appellant once it is brought to the notice of the bench of passing of interim order. SPA Vet Min (P) ltd Vs. Union lof India 2015 (318) ELT 394 Gujarat High Court.

- When inputs had been sent to Job Workers by debiting 10% of the value of inputs so sent and such inputs had been received beyond 180 days as the period of 180 days is not mandatory but is only directory. CCE Vs. Godrej & Boyce Mfg. Co Ltd 2015(318) ELT 417 (Bom).

- Even there is a shortage of finished goods and the inputs without there being any tangible evidence of clandestine removal of goods, no penalty is imposable. RA Casting (P) ltd Vs. CCE 2015(318) ELT 433 (Tri).

- The Hon'ble Supreme Court has held that when a show cause notice has been issued on a particular issue – the second show cause notice seeking to extend period of limitation cannot be issued on the very same issue and held that the demand for the period covered under the Second Show Cause Notice is time barred. Nirlon Ltd Vs. CCE MANU/SC/0518/2015.

- The cylinder repairs charges and the rental charges are not includible in the assessable value of the oxygen gas and liquid nitrogen gas marketed by the

appellant once it is established that the goods is marketable as such without being packed and there is no doubt about any excess recovery from the customers. CCE Vs. Indian Air Gases Limited 2015 (318) ELT 434 (Tri).

- Insurance claim settled by the insurance company and the police authorities have confirmed that there was a accidental fire, the excise department cannot the remission of duty on goods so destroyed in fire by alleging that the party has been negligent. The question of negligence arises when there was some legal duty which has not been followed by the party – mere alleging that there was negligence is not enough. Sanskriti Packaging (P) Ltd Vs. CCE 2015 (318) ELT 451 (Tri).

- Bagasse generated in the course of manufacture of sugar shall not disentitle the appellant to the CENVAT credit of the common input used in the manufacture of sugar. The Allahabad High Court in the case of Balrampur Chini Mills Ltd Vs. Union of India MANU/UP/3187/2012 = 2014 (300) ELT 372 (All) has held that since bagasse is not manufactured goods but is a waste product which emerges/comes into existence in the process of manufacture of sugar, hence, it cannot be said that the exempt goods have been manufactured and hence cenvat credit of inputs cannot be disallowed. Dharani Sugar & Chemicals Ltd Vs. CCE MANU/CC/0040/2015

- The Tribunal in the case of Umesh Pencil has examined the case in the light of judgment of the Hon'ble Supreme Court in the case of United Phosphorous reported in MANU/SC/0252/2000 : 2000 (117) ELT 529 (SC) and came to conclusion that mixture of graphite and clay, being extremely short shelf life, cannot be bought and sold in absence of evidence of any marketability and hence not dutiable. Hindustan Pencil (P) Ltd Vs. CCE MANU/CC/0039/2015.

- The acquittal of a person in criminal proceedings on a technical ground i.e. genuineness of the sanction order, shall not nullify the confiscation and penalty in adjudication proceedings pending under the Customs Act, 1962 before the Adjudicating Authority. KV Rajgopal Vs. CCE. 2015(318) ELT 48 Madras.

- When inputs had been supplied by the principal manufacturer to the Job Worker for Job Work on such inputs and the scrap and waste has been generated at the factory premises of the Job Workers, if such waste and scrap has not been returned by the Job Workers to the principal manufacturer, no cenvat credit pertaining to duty paid on inputs so given, is reversible by the principal manufacturer. The legislature has not made any provision for reversal of any credit taken on duty paid inputs in relation to the clearance of waste and scrap and/or their non return from Job Workers' premises under

Central Excise Rules, 2002. The credit is not required to be reversed. Mukand Ltd Vs. CCE 2015(318) 134 (Tri).

- In the process of re-making of defective picture tubes, when some new or fresh parts are used (on which duty had been paid by the party) and after re-making, the excise duty had been paid at the time of clearance of such re-made picture tube, the assessee is entitled to take cenvat credit of excise duty paid on such new or fresh parts so used at the time of re-making of Picture Tubes. Hotline CPT Ltd Vs. CCE 201%(318) ELT 141 (Tri).

SERVICE TAX –BY SHRI PRADEEP K. MITTAL-9811044365

- When the law provide a time period for filing of an appeal and also further provide a fixed time within which appeal and/or petition can be filed along with an application for condonation of delay. In other words, if the time prescribed for filing an appeal is 60 days and another 30 days with an application seeking condonation of delay, then no court has power to condone the delay beyond the maximum period fixed by law i.e. beyond 90 days. Sony Rebeior Vs. Commissioner of Service Tax 2015 (38) STR 5 Kerala.

- When outdoor catering service has been used for the business activity of the assessee Company and such services have been used primarily by all employees of the Company, the Cenvat Credit of the Service Tax paid for availing such service is permissible except where the outdoor catering has been used primarily for the personal use meant for consumption of any employee. Hindustan Coca Cola Breverages Ltd. Vs. CCE 2015 (38) STR 129 Tribunal.

- In case the Company is engaged for providing commercial training, coaching, management consultancy and other taxable service and has been providing residential accommodation to the faculty/teaching staff, any service tax paid to the broker in taking on rent the residential accommodation for such facility/teaching staff, is for the purpose of business of the assessee Company and, therefore, Service Tax paid to such broker is allowable as Cenvat Crediot. Tata Management Training Centre Vs. Commissioner of Central Excise 2015 (38) STR 157 Tribunal.

- Lifting, stacking and loading of sugar bags within the factory premises are not covered under the "Cargo Handling Service" and therefore, no service tax is payable. In view of the fact that ther was a confusion regarding taxabililty of Cargo Handling Service, the extended period of limitation is not invocable. Purshottam Lal Vs. Commissioner of Central Excise 2015 (38) STR 161 Tribunal Delhi.

- When the manufacturing unit has been leased out by the assessee to a party on payment of monthly lease rental, the case will be covered under "renting of immovable property" and not under "business support service". CCE Vs. Narsinha SSK Ltd. 2015 (38) STR 165 (Tribunal).

- When the only service rendered is marketing of granite blocks and assist in execution of Order such service cannot be held to be 'Management Consultanty' as the service of Management Consultancy involves rectification or improvement of working system or procedure or methods of the organization. Pushkar Steel Pvt. Ltd. Vs. Commissioner of Central Excise 2015 (38) STR 173 (Tribunal)

- When it respect of another assessee, it has been observed by the adjudicating authority that there is doubt as to whether the process amount to manufacture and, therefore, no penalty is payable and hence in respect of the Appellant Company, the same issue is involved and, therefore, the larger period of limitation cannot be invoked in respect of appellant company when the Department itself in another case has felt that there is doubt about the duty liability. Sanjay Industrial Corporation Vs. CCE 2015 (318) ELT 15 (SC).

- When paid/warnish material packed in tin and plastic containers and when both have been put (kept) in paper carton box for the purpose of transportation from the factory gate upon sale to individual customer or on stock-transfer basis, the value of paper carton is liable to be included in the value of paints. CCE Vs. Addisons Paints & Chemicals Ltd. 2015 (318) ELT 17 (SC).

- The Division Bench of Delhi High Court has held that once a public authority is under great financial stress and is providing subsidized facility of transport to general public, is unable to pay service tax in time and hence, penalty under Section 80 of Finance Act cannot be imposed by invoking Section 78 of Finance Act which speaks of levy of penalty for suppressing value of taxable service. Delhi Transport Corporation Vs. Commissioner of Service Tax MANU/DE/1162/2015.

- The Punjab & Haryana High Court has held that simultaneous imposition of penalty U/s 76,77 & 78 of the Finance Act, 1994 is not permitted. Care and Cure Pvt. Ltd. Vs. CCE 2015 (38) STR 225 Punjab & Haryana High Court.

- Where the party is facing financial crisis due to criminal breach of trust committed by their sub-agent denying the main agent of the money which they were entitled to receive from the sub-agent, yet the main agent has paid the service tax at the time of investigation but before issuance of Show Cause Notice, no penalty is imposable U/s 80 of the Finance Act, 1994.

Commissioner of Service Tax Vs. Lawson Travels and Tours India Pvt.Ltd. 2015 (38) STR 227 Madras High Court.

- Where the value of goods such as Transformer oil used for repair of transformers and in the invoice the sale tax has been paid on sale of transformer oil, no service tax is payable on the cost of transformer oil. Commissioner of Central Excise Vs. Mahindra Engineering Ltd. 2015 (38) STR 233 Allahabad High Court.

- The Services such as liaison work pertaining to Sales Tax and other matters of the Company in respect of Depot operation of C&F agent, these are held to be input service since the main function of the Depot is for dispatch of goods to customers and, therefore, the Cenvat Credit in respect of liaison services cannot be denied. CCE Vs. Nutrine Confectionary Co.Ltd. 2013 (38) STR 259 Bangalore.

- Services rendered by a Club to their constituent Members would not fall within the ambit of taxable club or association service and at the same time, the consideration paid by the members by way of subscription/fee is not liable to payment of service tax. Matunga Gymkhana Vs. Commissioner Service Tax 2015 (38) STR 407.

- As per Section 11 of the Factories Act, the factory premises is required to be kept neat and clean and, therefore, the Service Tax paid on manpower supply for cleaning of the yard in the sugar mill, Cenvat Credit is admissible on the Service Tax so paid. Further, the Service Tax paid on manpower supply in relation to payment of sugar cane and its unloading in the factory, the said activity is held to be in relation to the manufacture of sugar and molasses. Further, the manpower supply in relation to activity of sugar cane development by educating the farmers for better and good quality crop. Since the activity is for supply and good quality sugar cane the aforesaid activity hs nexus with the manufacturing business os the Appellant. Mawana Sugar Limited Vs. Commissioner of Central Excise 2015 (38) STR 424 Tribunal.

- The Punjab & Haryana High Court in the case of Ajay Kumar Gupta Vs. CESTAT MANU/P&h/0752/2015 has observed that once the appellant was not liable to pay Service Tax under the provisions of Section 68 since he was not providing taxable service at that point of time, the penalty imposable under Section 76 was rightly deleted by the Commissioner (Appeals). Another factor which has to be taken into consideration is that the penalty under Section 78 also pertains to the penalty for suppressing of value of taxable services. The intention, thus, of the person, has to be for evading the service tax which would impose the liability of the penalty and the section further provides that there has to be fraud, collusion or wilful mis-statement or

suppression of facts and contravention of the provisions of the Chapter or of the Rules with intent to evade payment of service tax. Once the service tax was not leviable under Section 68 at that point of time and the liability was only to deposit the tax under Section 73A(2), which has been done on 15.11.2008, after delay, but due to the service being not taxable at the relevant time when the invoices were raised, the case would not fall under the provisions of Section 78 for invoking of the penalty, as has been held by the Tribunal. It was the categorical stand of the appellant before the First Appellate Authority that the service tax had been collected by mistake, on account of the new provision and the office of the appellant was not fully acquainted with the interpretation of the statute due to which the default had occurred and therefore, in view of the defence taken, the Tribunal was not justified, in the present facts and circumstances, to hold that there was a wilful suppression of facts, to bring it within the ambit of Section 78.

- The Hon'ble Supreme Court has held that when a show cause notice has been issued on a particular issue – the second show cause notice seeking to extend period of limitation cannot be issued on the very same issue and held that the demand for the period covered under the Second Show Cause Notice is time barred. Nirlon Ltd Vs. CCE MANU/SC/0518/2015.

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cannot be bought and sold in absence of evidence of any marketability and hence not dutiable. Hindustan Pencil (P) Ltd Vs. CCE MANU/CC/0039/2015.

- It is the case of appellant that during the relevant period there was financial difficulties therefore the appellant could not pay the entire service tax within the prescribed time. It is also observed that except for the first periodical return the appellant was showing the correct service tax liability in the returns. Once the correct duty amount is shown in the returns there cannot be any intention of evade payment of service tax which is also paid by the appellant before the issue of show cause notice along with interest. In view of the above, there was reasonable cause for the appellant for not paying the entire service tax which was truly reflected in the periodical returns filed by the appellant. Under the Finance Act 1994, there are provisions for late payment of service tax alongwith interest which was done by the appellant before the issue of show cause notice. The appellant Hence, the appellant is entitled to the benefit of Section 73(3) of the Finance Act 1994 and no penalty is imposable under Section 80 of Finance Act, 1994. Fortune Networks (P) Ltd Vs. CCE MANU/CS/0039/2015.

- The Division Bench of Karnataka High Court has observed that Rule 2(1) of the CENVAT Credit Rules 2004 provides that 'Input Service' means service used by a provider of taxable service for providing an 'Output Service'. The contention of the Revenue once the Insurance Policy is issued by the Insurer, the transaction comes to an end (and would not depend on the re-insurance policy) and as such the service provided would not come within the ambit of input service, is not worthy of acceptance. The process of issuance of an Insurance Policy by the Insurer and subsequent procurement of re-insurance policy from another company (which is a statutory requirement) is an integral part of the total process. The process of insurance does not come to an end merely on the issuance of the Insurance Policy by the Insurer. In fact, it continues till the existence of the term of the policy. The re-insurance is taken by the Insurer immediately after the insurance policy is issued, as is required under Section 101A of the Insurance Act, 1938. Since re-insurance is a statutory obligation, and the same is co-terminus with the Insurance policy issued by the respondent. We only re-iterate that the issuance of insurance policy by insurer, and then taking of re-insurance by it, is a continuous process, and in the facts of the present case, it cannot be said that the same would not be an 'input service' eligible for CENVAT credit within the meaning of Rule 2(1) of the CENVAT Credit Rules 2004. CCE Vs. PNB Metlife Indian Co Ltd MANU/KA/0959/2015.

- The Division Bench of Jharkhand High Court has held that the Commissioner (Appeal) has no power to condone the delay in filing of an appeal beyond the period of one month from the initial period of two month within which the

appeal is required to be filed before him. The Commissioner (Appeal) cannot invoke the period of Section 14(2) of Limitation Act to condone the delay in respect of period during the appeal was pending before the wrong forum. In view of the statutory bar created by prescribing maximum, he has no authority to condone the delay beyond one month. TA Enterprises Vs. Union of India MANU/JH/0474/2015

CIVIL LAW - BY SHRI PRAVEEN K. MITTAL -9810826436

- The issue of limitation is not always mixed question of law and facts. From the bare reading of the plaint, it is manifestly apparent that the plaint is barred by time or by any law, the plaint is liable to be rejected in exercise of powers under Order 7 Rule 11 CPC. While considering the application under Order 7 Rule 11, the application and the documents filed by the defendant are not required to be seen and the only the plaint and documents annexed thereto. The suit for partition filed after 36 years of death of the father and further one of the floor of the suit property has also been sold more than 30 years on the basis of the will of the father, the suit being patently barred by time, is liable to be dismissed. Sangita Rehan Vs. Surinder Kishan Grover 2015(218) DLT 305. Delhi High Court.

- Mere acquittal of an employee in criminal proceedings does not automatically absolve the employee from the domestic disciplinary proceedings initiated by the employer as the standard of proof in criminal proceedings is substantially higher and different. Mother Dairy Vs. Arvind Kumar 2015 (218) DLT 362. Delhi High Court.

- The Probate Court has limited jurisdiction to look due execution of WILL by the Testator in his sound disposing mind without any pressure or influence and he is not to see as to whether the bequest was good or bad. SRIDHAR SAHOO & ANR. VS. MALATI SAHOO & ORS. 2015 (1) CCC 442 (ORI).

- Gift of land by the Donor to the Donee requires compulsory registration since its created right, title and interest in immovable property of a value greater than Rs.100/- in favour of the Donee. PHOOL PATTI & ANR. VS. RAM SINGH (DEAD) THROUGH LRS. & ANR 2015 (1) CCC 76 (SC)

- As per Section 34 when liability arises out of commercial transaction, the rate of interest may exceed 6% per annum. However, in case of commercial transaction, contractual rate of interest can be awarded and grant of interest @ 19.5% per annum held proper. NAUNIHAL & COMPANY. ETC. VS. BANK OF INDIA AND OTHERS 2015(1) CCC 376 (P&H).

- If Trial Court and first Appellate Court returning concurrent finding of fact then no substantial question of fact arising for High Court to decide in second appeal and no substantial ground for re-appreciation of evidence and it is not permissible for High Court in second appeal to reverse concurrent finding of fact. LAXMIDEVAMMA & ORS. VS. RANGANATH & ORS. 2015 (1) CCC 72 (SC)

- What is to be seen is whether cause of action has been disclosed in the plaint or not, and not whether Plaintiff has cause of action or not and both are quite distinct. It is not proper where the suit dismissed on the ground that there was no triable issue and appellant had no locus standi to file the case. Pankaj Bajaj Vs. Meenakshi Sharma & Ors. 2015 (1) CCC 180 (Del.).

- Once a gift in accordance with law has been made, property stands transferred from Donor to Donee and Donor is divested of all rights in property and property vests absolutely in Donee and the Donor cannot subsequently revoke/cancel said transaction, just like once a property is sold, seller/vendor cannot subsequently revoke or cancel sale – Only difference between a Sale Deed and a Gift Deed is that while in Sale Deed consideration is materialistic, in a Gift Deed consideration is non-materialistic. To held that transferor of property, after affecting the transfer, retains a right to revoke/cancel transfer would tantamount to unsettling rights and transactions in immovable property. Mohinder Singh Verma Vs. J.P.S. Verma & Anr. 2015 (1) CCC 289 (Del.)

- Inclusion and display of name in list of defaulters – Respondent Bank has raised fanciful claims with a mala fide intention to put undue pressure on petitioner – Settlement entered into by parties, escrow arrangement and amount paid by petitioner in pursuance thereof, does not find mention in Original Application – Petitioner having paid amount of Bank guarantees along with interest to respondent bank in terms of compromise, cannot be stated to be a defaulter – Non disclosure of facts is intentional and proceedings instituted by Respondent Bank are abuse of process of law – Respondent Bank directed to forthwith take steps to remove name of petitioner as a defaulter by communicating the same to CIBIL – CIBIL further directed to remove name of petitioner and its directors from list of defaulters. Triveni Engineering & Industries Ltd. Vs. Union Bank of India & Ors. 218 (2015) DLT 548

- Ordinarily, time schedule prescribed under Order 8 Rule 1, CPC ought to be adhered to and prayer for extension of time made by a defendant for filing of written statement should not be granted just as a matter of routine and merely for asking, more so when period of 90 days has expired. Extension of time may be allowed by way of an exception, for reasons to be assigned by

defendant and placed on record in writing and Extension of time can be allowed under exceptional circumstances, caused by reasons beyond control of defendant and where grave injustice would be occasioned if time was not extended. Visionaire India Vs. IBM India Pvt. Ltd. 218(2015) DLT 541.

- In absence of any postal receipt, returned envelope or proof of posting of cancellation letter, purported to be issued to petitioner at his earlier address, no presumption of service can be drawn against petitioner- Petitioner cannot be made to suffer on account of lapse or inaction on part of DDA. Harish Chander Vs. DDA – 218 (2015) DLT 255.

- Discretion vested in a court to permit reexamination of a witness under Section 311, Cr. P.C. has to be exercised on broad principle that same is considered necessary to meet ends of justice and if not so permitted, may lead to injustice. Acura Glass Tiles Enterprises Vs. S.S. Ray- 218 (2015) DLT 238.

- For making a Director of a company liable for the offences committed by the company, there must be specific averments against the Director showing as to how and in what manner the Director was responsible for the conduct of the business of the company. Pooja Ravinder Devidasani Vs. State of Maharastha & Anr. 2015 (2) JCC (NI) 105.

- The order of the Magistrate summoning the Accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the Complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused. Pooja Ravinder Devidasani Vs. State of Maharastha & Anr. 2015 (2) JCC (NI) 105.

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

- The dispute about the nature of agreement can be gone into by the Arbitrator so appointed on a petition under Section 11 of Arbitration & Conciliation Act, 1996. One of the party raised an objection that the agreement is not properly stamped and hence High Court directed the Arbitrator to refer the matter to collector of stamp for adjudication of stamp duty and upon payment of stamp duty, to take agreement on record and proceed further with the arbitration proceedings. Axis Ispat (P) Ltd Vs. Sadhna Mines (P) Ltd 2015(218) DLT 360.

- In case the Arbitral Tribunal is not performing, it is open to the party seek appointment of substitute arbitrator ignoring the procedure agreed to in then arbitration agreement between the parties. Union of India Vs. UP State Bridge Corporation Ltd 2015 (125) CLA 177 SC.

- Award should be shown to be so "perverse or irrational that no reasonable person would have arrived at same" in the objection petition under 34 of the Arbitration and Conciliation Act, 1996. Tractel Tirfor India Pvt. Ltd. Vs. Nehru Place Hotels Ltd. & Anr. 218 (2015) DLT 558.

- In terms of Section 14, it is clear that when there is a failure on the part of the arbitral to act and is unable to perform its function either de jure or de facto, it is open to a party to approach the court to decide on the termination of the mandate and seek appointment of substitute arbitrator. Union of India and others Vs. Uttar Pradesh State Bridge Corporation Ltd. (2015) 125 CLA 177 (SC).

- The moment demand for arbitration is made, the Appointing Authority has no choice but to appoint within 30 days from the date of receipt of demand as stipulated in clause (a) of sub-section (4) of Section 11 even if no time is mentioned in the arbitration agreement. Sew Infrastructure Ltd. Vs. Andhra Bank. (2015) 125 CLA 2 (T&AP).

- Discretion of court to grant interim relief under Section 9 of the Arbitration and Conciliation Act, 1996 has to be exercised sparingly and only in appropriate cases and courts should be extremely cautious in granting interim relief. C.V. Rao Vs. Strategic Port Investments KPC Ltd. 218 (2015) DLT 200 (DB).

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