

# **PKMG LAW CHAMBERS**

## **ADVOCATES AND SOLICITORS MONTHLY LAW REPORT FOR MAY,2018**

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**B.COM,L.L.B(3<sup>rd</sup> YEAR)**

## REGULATORY UPDATES (Notifications/Circulars)

Notification&Circular No.	Date of Issue	Subject
<p><b>1. Ministry of Corporate Affairs</b></p> <p><b>Notification- G.S.R. 472(E).</b></p>	<p><b>22/05/2018</b></p>	<p><b>Subject: – Amendment in the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016</b></p> <p>In exercise of the powers conferred by sub-sections (1), (2), (3), (4), (8), (9), (10) and (11) of section 125 and sub-section (6) of section 124 read with section 469 of the Companies Act, 2013,</p> <p>“The Central Government hereby makes the following rules, further to amend the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016, namely” :-</p> <p>1.(1) These rules may be called the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Third Amendment Rules, 2017.</p> <p>(2) They shall come into force with effect from the <b>22nd May 2018</b>.</p> <p><b>2. In the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016</b> in rule 6 in sub-rule (13), after the words “<i>maintained in the Punjab National Bank</i>” the following shall be inserted, namely:-</p> <p>“and the details thereof shall be furnished to the Authority in <b>Form No. IEPF 7</b> within thirty days from the date of remittance or within thirty days from the date of enforcement of these Rules, as the case may be.”</p>

**2. MINISTRY OF  
CORPORATE AFFAIRS**

**NOTIFICATION - G.S.R.  
429 (E).—**

**07/05/2018**

**Subject- Amendment in the  
Companies (Meetings of Board and  
its Powers) Rules, 2014**

In exercise of the powers conferred by sections 173, 177, 178 and section 186 read with section 469 of the Companies Act, 2013,

"The Central Government hereby makes the following rules further to amend the Companies (Meetings of Board and its Powers) Rules, 2014, namely" :—

1.(1) These rules may be called the Companies (Meetings of Board and its Powers) Amendment Rules, 2018.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Meetings of Board and its Powers) Rules, 2014 (hereinafter referred to as the principal rules), **in Rule 4, the following proviso shall be inserted, namely:-** "Provided that where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audio visual means.".

3. In the principal rules, in **Rule 6**, for the words "every listed company", the words "every listed public company" shall be substituted.

4. In the principal rules, for **Rule 13**, the following rule shall be substituted, namely:- "13. Special Resolution.- A resolution passed at a general meeting in terms of sub-section (3) of section 186 to give any loan or guarantee or investment or providing any security or the acquisition under sub-section (2) of section 186 shall specify the total amount up to which the Board of Directors are authorised to give such loan or guarantee, to provide such security or make such acquisition: Provided that the company shall disclose to the

		<p>members in the financial statement <u>the full particulars in accordance with the provisions of sub-section (4) of section 186.</u>"</p>
<p><b>3. MINISTRY OF CORPORATE AFFAIRS</b></p> <p><b>NOTIFICATION- G.S.R. 430 (E)</b></p>	<p><b>07/05/2018</b></p>	<p><b>Subject:— Amendment in the Companies (Prospectus and Allotment of Securities) Rules, 2014</b></p> <p>In exercise of the powers conferred by section 26 read with section 469 of the Companies Act, 2013 (18 of 2013),</p> <p>"The Central Government hereby makes the following rules further to amend the Companies (Prospectus and Allotment of Securities) Rules, 2014, namely": -</p> <p>1.(1) These rules may be called the Companies (Prospectus and Allotment of Securities) Amendment Rules, 2018.</p> <p>(2) They shall come into force on the date of their publication in the Official Gazette.</p> <p>2. In the Companies (Prospectus and Allotment of Securities) Rules, 2014, <b>the rule 3, rule 4, rule 5 and rule 6 shall be omitted.</b></p> <p><i>[Below mentioned rules has been omitted]</i></p> <p><i>Rule3. Information to be stated in the prospectus.</i></p> <p><i>Rule4. Reports to be set out in the Prospectus.</i></p> <p><i>Rule5. Other matters and reports to be stated in the prospectus.</i></p> <p><i>Rule6. Period for which information to be provided in certain cases.</i></p>

**4.MINISTRYOF  
CORPORATE AFFAIRS**

**NOTIFICATION- G.S.R.  
432 (E).—**

**07/05/2018**

**Subject: ENFORCEMENT OF THE  
COMPANIES (AUDIT AND AUDITORS)  
RULES, 2014,**

In exercise of the powers conferred by sections 139, 143, 147 and 148 read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013),

"The Central Government hereby makes the following rules further to amend the Companies (Audit and Auditors) Rules, 2014, namely":—

1. Short title and commencement.-

(1) These rules may be called the Companies (Audit and Auditors) Amendment Rules, 2018. (2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Audit and Auditors) Rules, 2014 (hereinafter referred to as the principal rules), in rule 3,-

**(a) Explanation shall be omitted;**

*[Explanation.- For the purposes of this rule, it is hereby clarified that, if the appointment is not ratified by the members of the company, the Board of Directors shall appoint another individual or firm as its auditor or auditors after following the procedure laid down in this behalf under the Act.]*

(b) proviso to sub-rule (7) shall be omitted.

*"Provided that such appointment shall be subject to ratification in every annual general meeting till the sixth such meeting by way of passing of an ordinary resolution."*

3. In the principal rules, rule 9 shall be omitted.

*[Rule 9.Liability to devolve on concerned partners only.- In case of criminal liability of any audit firm, the liability other than fine, shall devolve only on the concerned partner or*

		<p><i>partners, who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud.]</i></p> <p>4. In the principal rules, in rule 10A, for the words "adequate internal financial controls system", the words "internal financial controls with reference to financial statements" shall be substituted.</p> <p>5. In the principal rules, in rule 14,-  (a) in clause (a), in sub-clause (i), for the words, "who is a cost accountant in practice", the words "who is a cost accountant" shall be substituted; (b) in clause (b) for the words "who is a cost accountant in practice", the words "who is a cost accountant" shall be substituted.</p>
<p><b>6. MINISTRY OF CORPORATE AFFAIRS</b></p> <p><b>NOTIFICATION-. G.S.R. 434(E).</b></p>	<p><b>07/05/ 2018</b></p>	<p><b>Subject: –ENFORCEMENT OF the Companies (Share Capital and Debentures) Second Amendment Rules, 2018.</b></p> <p>In exercise of the powers conferred by sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013),  "The Central Government hereby makes the following rules further to amend the Companies (Share Capital and Debentures) Rules, 2014, namely":—</p> <p>1. Short title and commencement.—  (1) These rules may be called the Companies (Share Capital and Debentures) Second Amendment Rules, 2018.  (2) They shall come into force on the date of their publication in the official Gazette.</p> <p>2. In the Companies (Share Capital and Debentures) Rules, 2014, in the principal rules, in rule 8, in sub-rule (1), in the Explanation, in clause (i) in sub-clause (a), the words "for at least last one year" shall be omitted.</p>

<p><b>7. MINISTRY OF CORPORATE AFFAIRS</b></p> <p><b>NOTIFICATION-G.S.R. 422(E)</b></p>	<p><b>01/05/2018</b></p>	<p><b>SUBJECT- ENFORCEMENT OF the Insolvency and Bankruptcy Board of India (Annual Report) Rules, 2018.</b></p> <p>In exercise of the powers conferred by clause (zm) of sub-section (2) of section 239 read with sub-section (1) of section 229 of the Insolvency and Bankruptcy Code, 2016, the Central Government hereby makes the following rules, namely:—</p> <p>1. Short title and commencement.-</p> <p>(1) These rules may be called the Insolvency and Bankruptcy Board of India (Annual Report) Rules, 2018.</p> <p>(2) They shall come into force on the date of their publication in the Official Gazette.</p> <p>2. Definitions: (I) In these rules, unless the context otherwise requires, —</p> <p>(a) "Code" means the Insolvency and Bankruptcy Code, 2016 (31 of 2016);</p> <p>(b) words and expressions used in these rules but not defined, and defined in the Code shall have the meanings respectively assigned to them in the Code.</p> <p>3. Form of Annual Report.- The Board shall prepare its annual report, giving a true and full accounts of its activities, policies and programmes, during the previous financial year in the Form annexed to these rules.</p> <p>4. Time of furnishing of the Annual Report.- The Board shall submit a copy of the annual report referred to in rule 3 to the Central Government within ninety days of the end of the financial year.</p>
<p><b>8. MINISTRY OF CORPORATE AFFAIRS</b></p> <p><b>NOTIFICATION-S.O. 1817(E).</b></p>	<p><b>01/05/2018</b></p>	<p><b>SUBJECT- ENFORCEMENT OF SECTION 227 TO 229 OF the Insolvency and Bankruptcy Code, 2016</b></p> <p>In exercise of the powers conferred by sub-section (3) of Section 1 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government hereby appoints the 1st</p>

		day of May, 2018 as the date on which the provisions of Section 227 to Section 229 (both inclusive) of the said Code shall come into force.
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***Companies Act, 2013 Case Studies***  
***By Advocate Pradeep Kumar Mittal, +91-9811044365***

- ✚ NCLAT held that where appellants have proved that they are shareholders jointly holding 10% of the total shareholding, they have right to file the petition. **Esquire electronics inc. V. Netherlands India communications enterprises ltd. MANU/NC/0080/2016**
  
- ✚ Where there are delayed and laches in filling petition and no application is submitted to condone delay for sufficient reasons, such delay cannot be condoned. **Sangeta maheshwari vs. premsagar agricultural (P.) LTD. MANU/NC/1500/2017**
  
- ✚ Where there is allegation of forgery in transfer documents, which involves complicated question of law, the same cannot be resolved in summary proceedings. **Sangeta maheshwari vs. premsagar agricultural (P.) LTD. MANU/NC/1500/2017**
  
- ✚ NCLAT held that, in a petition for relief filled under oppression and mismanagement, the appellant cannot revive any issue which is three years prior to the date of filling of the petition. **Esquire electronics inc. V. Netherlands India communication enterprises ltd. Manu/NC/0013/2017**
  
- ✚ Where the company, has not been conducting business for two years prior to the date of striking off by the Registrar of Companies, however filling income tax returns for the relevant years and income tax department having no objection for restoring the companies name. NCLT held that The Company was in operation at the time of striking off its name, and directed the registrar to restore the name of the



company. **Three star properties (P.)Ltd. V. Registrar of Companies MANU/NC/5342/2018**

***Insolvency and Bankruptcy Code, 2016 Judgments  
By Advocate Pradeep Kumar Mittal, +91-9811044365***

- ✚ NCLT held that the electricity authorities are not entitled to disconnect power supply, being essential service with reference to corporate debtor, for nonpayment of electricity bill during the moratorium period. **ABG shipyard Ltd. Vs. ICICI Bank Ltd. MANU/NC/2830/2017**
- ✚ NCLT held that where there is an existing agreement between corporate applicant and corporate debtor for an exploration project. The obligation of corporate debtor in relation to the development of exploration block is bear by corporate applicant and thereafter, the corporate debtor has failed to repay the same. The payment shall fall within the ambit of 'Financial Debt'. hence, the applicant is entitled to be included in the committee of creditors as a financial creditor. **Gujarat state petroleum corporation ltd. MANU/NC/2224/2017**
- ✚ NCLAT quashes NCLT order, dismissing corporate applicant's application under section 10 of Insolvency and bankruptcy Code,2016.it held that NCLT cannot reject an application without recording an opinion that a prima facie case is made out to suggest that the application has been filled fraudulently. **LSI-194-NCLAT-2018(NDEL)**
- ✚ High Court held that if any criminal proceedings were pending against the respondent company in lieu of which its properties were seized by the investing authorities, the petitioner bank has no liberty to sell the mortgaged property of the company and could not claim to be secured creditor also. **LSI-200-HC-2018(MAD)**

- ✚ The subscription money advanced for purchase of shares would not fall within the definition of Financial Debt, consequently the petitioner cannot be regarded as a 'Financial Creditor'. **ACPC ENTERPRISES v. AFFINITY BEAUTY SALON (P.) LTD. [2018]144 CLA 102 (NCLT)**
- ✚ If there is a dispute regarding pending tax liability which has existed prior to receipt of demand notice u/s 8, the amount of claim raised by the operational creditor cannot be admitted, and the petition shall be liable to be dismissed. **Dolphin Offshore Enterprises (INDIA) LTD. V. Instrumentation Ltd. [2018] 144 CLA 109 (NCLT)**

## **Income Tax Circulars, Notifications and Press Release By CA Manoj Kumar Mittal, +91-9810764620**

### **CBDT Directs Dedication Of Fortnight For Appeal Effect And Redressing Public Grievances**

The CBDT has issued a directive dated 7th May 2018 stating that the delay in giving appeal effect and passing rectification orders is the biggest source of grievance against the Department. It is pointed out that such delays also adversely affect the performance of the Department as the infertile demand remains stuck in appeal orders and rectification petitions till these are disposed of by the assessing officer. With a view to expeditiously dispose off the appeal effect and rectification claims of the taxpayers, the CBDT has directed that the first fortnight of June, 2018 should be dedicated for attending to the pending claims in these areas.

### **Rule 11UA amended**

Central govt vide notification no. 23/2018/F. No.370142/5/2018-TPL dated 24.05.2018 for the purpose of valuation of share under DCF method has removed the word accountants. It means that it will be carried out by Merchant Banker only now.

### **'Protocol amending the agreement between the government of the republic of India and the government of the state of kuwait**

Protocol amending the agreement between the government of the republic of India and the government of the state of Kuwait for the avoidance of double taxation and the prevention of fiscal evasion with

respect to taxes on income is notified by Govt of India vide notification No. 21/2018/F.No.501/03/88-FTD-II dated 04.05.2018.

## **Income Tax Case Studies**

### **By CA Manoj Kumar Mittal, +91-9810764620**

#### **Case Laws**

#### **Domestic Case Laws**

**NATIONAL DAIRY RESEARCH INSTITUTE VS ACIT, 94 TAXMANN.COM 19 (BENGALURU – TRIB) WHERE ASSESSEE, AN AUTONOMOUS RESEARCH INSTITUTE IN DAIRY DEVELOPMENT WAS TREATED AS AN ASSESSEE IN DEFAULT UNDER SECTION 201(1) AS IT FAILED TO DEDUCT TAX AT SOURCE ON PERQUISITE VALUE OF RENT FREE RESIDENTIAL ACCOMMODATION PROVIDED TO ITS EMPLOYEES, IN TERMS OF RULE 3 AS APPLICABLE, WHERE ACCOMMODATION IS PROVIDED BY ANY EMPLOYER OTHER THAN CENTRAL GOVERNMENT OR STATE GOVERNMENT, IT WAS HELD THAT EMPLOYEES OF SOCIETY CANNOT BE EQUATED WITH EMPLOYEES OF CENTRAL GOVERNMENT AND, THEREFORE, CLAUSE (II) OF SUB RULE (1) OF RULE 3 OF INCOME TAX RULES WAS RIGHTLY APPLIED AND NO RELIEF COULD BE GRANTED FOR NON DEDUCTION OF TAX**

#### **ACIT, vs SSA INTERNATIONAL LTD, 94 TAXMANN.COM 17 (DELHI - TRIB.)**

Where assessee during search proceedings in reply to specific query raised by Assessing Officer expressed his inability to explain discrepancy in stock in order to substantiate manner in which income in question had been derived rather categorically stated that he had made voluntary surrender of Rs.21 crores in order to buy peace of mind and avoid litigation, assessee having failed to specify manner and substantiate manner in which undisclosed income was derived rather embarked upon mercy plea that he was making surrender to buy peace of mind and avoid litigation, he would not be entitled for benefit of section 271AAA(2)

#### **AMAR KANAYALAL NAGPAL VS ITO, 94 TAXMANN.COM 51 (MUMBAI - TRIB.)**

IN ABSENCE OF A SPECIFIC PROVISION TO EFFECT THAT PERIOD OF HOLDING OF AN ASSET ACQUIRED BY A CONTINUING PARTNER ON DISSOLUTION OF FIRM OCCASIONED BY DEATH OF A PARTNER, IS TO BE RECKONED FROM DATE OF ACQUISITION OF SAID ASSET BY FIRM, WHICH IS A SEPARATE ENTITY UNDER INCOME TAX ACT, 1961, CLAIM OF ASSESSEE THAT PERIOD OF HOLDING OF PROPERTY UNDER CONSIDERATION

WAS TO BE DATE ON WHICH IT WAS ACQUIRED BY FIRM I.E., 04.05.1984 AND NOT ON DATE WHEN IT WAS ACQUIRED BY ASSESSEE AS A CONTINUING PARTNER ON DISSOLUTION OF FIRM COULD NOT BE ACCEPTED AND, THEREFORE ASSESSEE WOULD NOT BE ENTITLED TO EXEMPTION UNDER SEC. 54EC FOR LONG TERM CAPITAL GAIN ON SUCH PROPERTY■

SUNRISE ACADEMY OF MEDICAL SPECIALITIES (INDIA) (P.) LTD. VS INCOME TAX OFFICER, 94 TAXMANN.COM 181 (KERALA)

ORDER PASSED BY ASSESSING OFFICER TO EFFECT THAT SHARE PREMIUM RECEIVED BY ASSESSEE ON ISSUE OF SHARES WAS LIABLE TO BE ASSESSED AS 'INCOME FROM OTHER SOURCES' UNDER SECTION 56(2)(VIIB), COULD NOT BE CHALLENGED ON GROUND THAT ASSESSING OFFICER HAD EXCEEDED HIS JURISDICTION WHILE PASSING OF AFORESAID ORDER

HOME FINDERS HOUSING LTD. VS ITO, [2018] 94 TAXMANN.COM 84 (SC)

SLP dismissed against High Court's order that non-compliance of direction of Supreme Court in GKN Driveshafts (India) Ltd. v. ITO [2002] 125 Taxman 963 that on receipt of objection given by assessee to notice under section 148, Assessing Officer is bound to dispose of objections by passing a speaking order, would not make reassessment order void ab initio.

### **International Tax Laws**

HM Publishers Holdings Ltd., In re, [2018] 94 taxmann.com 193 (AAR - New Delhi)

Where applicant foreign company received non-compete fees from ADI BPO Services, an Indian Company, as a part of consideration for transfer of shares held in MPS Ltd. an Indian Company, it is income from "Profits and gains of business or profession" as provided under section 28(va) but it shall not be chargeable to tax in India in absence of any Permanent Establishment of Applicant in India, by virtue of Article 7 of Double Taxation Avoidance Agreement ('DTAA') between India and United Kingdom

MasterCard Asia Pacific Pte. Ltd., In re , [2018] 94 taxmann.com 195 (AAR - New Delhi)

Where Applicant MasterCard Asia Pacific is a Singapore based company engaged in processing of electronic payment transactions has an Indian subsidiary which owns and maintains MasterCard Interface Processor placed at Customers' locations in India, a part of fees received/to be received by Applicant from Indian Customers would be classified as royalty; however, since it is effectively connected to PE, it would be taxed under Article 7 and not under Article 12

FRS Hotel Group (Lux) S.a.r.l. In re, 94 taxmann.com 23 (AAR - New Delhi) Payments received by applicant from Indian hotel owner for provision of global reservation services (GRS) would be chargeable to tax in India under section 9(1)(i) read with Articles 5 and 7 of India-Luxembourg DTAA as business income and is attributable to applicant's permanent establishment in India

Nokia Networks OY vs Joint Commissioner of Income-tax, 94 taxmann.com 111 (Delhi - Trib.) (SB)

Income of Nokia Finland from offshore supply of telecom equipment manufactured in Finland in pursuance of supply contract with Indian telecom operators could not be brought to tax in India even where installation was done by its subsidiary Nokia India

### **Transfer Pricing Case Laws**

Advice America Software Development Center (P.) Ltd. vs ITO Ward 1(1), ND

Software testing being only part of software development life cycle, it cannot be equated with software development services

Developing software products for clients would also be in nature of rendering software developing services

If a company is otherwise comparable, though that company follows a different financial year as its accounting year but results of such company for financial year followed by assessee is available, then such company should also be considered for comparability analysis.

Bekaert Industries (P.) Ltd., VS ACIT, 94 taxmann.com 120 (Pune - Trib.)

Assessee after receiving draft assessment order in which transfer pricing adjustments are proposed, is empowered to file additional evidence before DRP, and DRP has power to consider evidences furnished by assessee, and after considering additional evidence, DRP has to comment upon same and dispose of objections of eligible assessee

Where assessee is importing finished goods from its associated enterprise and without making any value addition is delivering same along with other items to its customers in India, Re-sale Price Method is most appropriate method to be applied in such circumstances since assessee is purchasing finished goods from its associated enterprise at a price, which in turn, re-sells to unrelated enterprises

A T & S India (P.) Ltd., vs DCIT, 94 taxmann.com 16 (Kolkata - Trib.)

Keeping AE as a tested party would fundamentally defeat basic purpose of TP regulations

Assessing Officer/TPO cannot ignore six methods which are prescribed in statute to determine arm's length price (ALP) under section 92C

Authority of TPO would be to conduct a transfer pricing analysis to determine arm's length price (ALP) and not to determine whether there is a service or not from which assessee benefits.

DDIT vs Pioneer Overseas Corporation India

A company operating a diagnostic centre and not engaged in research services cannot be considered as comparables to assessee carrying out R & D in relation to development of seeds

Where company has two sets of income, i.e., income from contract research fees and sale of compounds, since segmental details were not available, it could not be compared to assessee.

Oriflame India (P.) Ltd. vs ACIT, 93 taxmann.com 185 (Delhi)

Where assessee challenged inclusion of one comparable while determining ALP, in view of fact that even though Tribunal had accepted assessee's plea of functional dissimilarity, yet it did not pass order of exclusion of said comparable and remanded matter back to TPO for disposal afresh, order so passed was to be set aside and Tribunal was to be directed to dispose of case on merit.

#### COMPLIANCE CALENDER DURING THE MONTH OF JUNE 2018

Sr. No.	Date	Purpose	Compliance Month	Event Details
1	07th June 18	TDS/TCS Liability Deposit	May-18	Due date of depositing TDS/TCS liabilities for the month of May 2018
2	10th June 18	GSTR-1	May -18	GST Filing of returns by the registered person with aggregate turnover more than 1.50 crores
3	15th June 18	Provident Fund / ESI	May-18	Due date for payment of Provident fund and ESI contribution for the previous month
4	15th June 18	Advance Tax	Quarter-1	Due date for First Installment of advance tax for the AY 2019-20
5	20th June 2018	GSTR - 3B	May-18	Due date for filling GSTR - 3B return for the month May 2018
6	20th June 2018	GSTR - 5	May-18	Return by a non-resident taxable person

<b>7</b>	20th June 2018	GSTR-5A	May-18	OIDAR - Details of supplies of online information and database access or retrieval services by a person located outside India made to non-taxable persons in India
<b>8.</b>	25 <sup>th</sup> June 2018	FORM 12A	MAY 18	Provident Return filling for MAY 2018(including Pension and insurance scheme Forms)
<b>9.</b>	30th June 2018	Tran- 2 Form	FY 2017-18	Carry Forward of ITC as on 30-06-2017 by a person registered under GST but was not registered under earlier Act

MAY 2018

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