

PKMG LAW CHAMBERS

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MONTHLY REPORT FOR OCTOBER, 2010

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NOTIFICATIONS/CIRCULARS/REGULATIONS/RULES:

- Review of norms for investment and disclosure by mutual funds in derivatives. Circular No. IMD/DF/11/2010, dated 18th August, 2010.
- Transferability of mutual.fund units –IMD/DF/10/2010, dated 18th August, 2010.
- Allocation of government debt and corporate debt investment limits to foreign investment institutions – IMD/FIIC/9/2010, dated 6th August, 2010.
- Introduction of smart order routing – MRD/DP/26/2010, dated 27th August, 2010.
- Securities trading using wireless technology – MRD/DP/25/7010, dated 27th August, 2010.
- Account maintenance charges collected upfront on annual/half-yearly basis on demat accounts – CIR/MRD/DP/20/2010 dated 1st July, 2010.
- SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 – Discussion paper for proposed changes – issued by SEBI.
- Arbitration mechanism in stock exchanges – Circular No.MRD/DSA/24/2010, dated 11th August, 2010.
- Arbitration mechanism in stock exchanges – Modification of para 7 – Circular No.MRD/DSA/29/2010, dated 31st August, 2010.
- Execution of power of attorney by the client in favour of the stock broker/stock broker and depository participant – Circular No.MRD/DMS/28/2010, dated 31st August, 2010.
- Submission of audit report under regulation 55A of SEBI (Depositories and Participants) Regulations, 1996- Circular No.MRD/DP/30/2010, dated 6th September, 2010.
- Trading rules and shareholding in dematerialized mode – Circular No.SEBI/ Cir/ISD/1/2010 dated 2nd September, 2010.
- Request for “interpretive letter” under SEBI (Informal Guidance) Scheme, 2003 under regulation 11(1)/(2) of SEBI Takeovers Regulations – Letter No.CFD/DCR/IG/DMS/19409/10, dated 9th September, 2010.
- Securities and Insurance Laws (Amendment and Validation) Act, 2010 – Act 26 of 2010 – Assented by the President on 20th August, 2010.

LEGAL CASES:

- **GRIDHAR GOPAL SHARMA V. UNITECH LTD (2010) 98 (CLA) 69. (CLB)** :The Company Law Board decided that it is not correct interpretation of section 11B, a rule laying provision, to say that it is merely meant for the Securities and Exchange Board (SEBI) to issue guidelines/directions to bring uniformity and consistency in the functioning, and hence guidelines/directions are not binding on the companies. Statutory provision has been made under section 11B for the SEBI to issue directions which are binding on those for whom these have been issued, namely, Registrar to Issue (RTI)/Share Transfer Agents and companies [Section 11B of SEBI Act, 1992]

INCOME TAX – BY SH.HIMANSHU GOYAL - 9899566764

- **L.G. Electronics India (P) Ltd. Vs Additional Commissioner of Income Tax, Range-IV, New Delhi (2010) 39 SOT 275 (Delhi)** : Section 28(i) of the Income Tax Act, 1961- Business income. Chargeable as Assessment year 2002-03. Assessee was engaged in manufacturing, marketing and sales of electronic and electrical appliances. It was following uniform pricing policy, called 'dealer price' in State of U.P and other States, which was inclusive of sales tax. Uttar Pradesh Government, under Uttar Pradesh State Industrial Policy, 1989 had granted subsidy to new industries to encourage setting up of new industrial units in form of sales tax exemption – Since State Government could not give subsidy in cash, assessee had been granted right to retain sales tax payable to State Government. Since assessee was not liable to pay sales tax, as exemption had been provided to it, sales tax element which was embedded in sale price had been retained by assessee as excess sales consideration and year end assessee had allocated sales tax element from dealer's price and had claimed same as capital subsidy .
- **Shri Lalita Ashram Trust Vs. Commissioner of Income Tac, Rohtak (2010) 39 SOT 324 (DELHI)** : Whether issues such as assessee had claimed double deduction in respect of same assets or income had not been applied to extent of 85 per cent for objects of trust, would not be relevant at time of granting of registration or renewal of registration under section 80G,. Held, yes. Whether, even otherwise, in view of fact that objects of trust were charitable in nature and it had been registered under section 12A for last 25 years, Commissioner was not justified in denying continuation of its registration under section 80G when assessee had enjoyed such benefit since its inception. Held, yes.
- **Income Tax Officer Vs. Takshila Distributors (P) Ltd. (2010) 39 SOT 5 (Delhi) (URO)** : Section 147, read with section 148 of the Income Tax Act, 1961. Income escaping assessment. General. Assessment year 1999-2000. Whether subsequent material collected during course of reassessment proceedings can not

be taken into account and validity of reassessment is to be judged on basis of material available at time of issuance of notice under section 148. Held, yes.

- **INCOME TAX OFFICER VS. PAWAN KUMAR GUPTA (2010) 131 TTJ (Del)(UO) 92** : Income from undisclosed sources. Addition under s.69A. Absence of opportunity to cross examine witnesses. Addition under s.69A made by AO on the basis of statements of B, his son and the accountant. Admittedly, these statements were never provided to the assessee for rebuttal nor was he afforded any opportunity to cross examine the deponents of these statements despite repeated requests to the AO. Even at the first appellate stage, the matter was remitted by the CIT(A) to the AO, but once again no such opportunity was provided to the assessee, the matter can not be set aside to the AO to fill up the lacuna.
- **INCOME TAX OFFICER VS. PAWAN KUMAR GUPTA (2010) 42 DTR (Del)(Trib) 148** : Income from undisclosed sources. Addition under s. 69A. Absence of opportunity to cross examine witnesses. Addition under s.69A made by AO on the basis of statements of B, his son and the accountant. Admittedly, these statements were never provided to the assessee for rebuttal nor was he afforded any opportunity to cross examine the deponent of these statements despite repeated requests to the AO. Even at the first appellate stage, the matter was remitted by the CIT(A) to the AO, but once again no such opportunity was provided to the assessee. Addition rightly deleted by CIT(A). IN a case where no opportunity is provided to the assessee, the matter can not be set aside to the AO to fill up the lacuna.
- **JAIPRADEEP SECURITIES LTD. VS. DEPUTY COMMISSIONER OF INCOME TAX (2010) 4 DTR (Trib) 491 (Delhi)** : Business loss. Bad debts. Share broking business. Sums owned to assessee by clients on whose behalf transactions undertaken. Amount written off not shown as income in earlier year. Can be allowed as Business loss. Income Tax Act, 1961, ss.28. 36(1)(vii).
- **DR.SURYA MANI DWIVEDI VS. ASSISTANT COMMISSIONER OF INCOME TAX (2010) 42 DTR (Lucknow)(Trib) 433** : Income from undisclosed sources. Addition under s.69B. Difference in cost of construction. Admittedly, assessee maintained and produced books of account viz; cash book, ledger, general fees receipt registers and other relevant documents/papers before the AO. Assessee also filed details of expenditure under different heads such as Sariya, Maurang, Gitti, labour and wooden work etc. AO has not pointed out any single item of expenditure which is not supported by bill and voucher. Further, books of account maintained by the assessee and the cost of construction shown therein are duly supported by the report of a Government approved valuer. AO has not commented upon the said report and merely relied on the report of the DVO to make addition of the difference of cost of construction as per DVO and that shown by the assessee. Not justified. No addition can be made on the basis of the report of the DVO when books of account have been maintained wherein every expenditure relating to the construction is recorded and those books of account have not been rejected by the AO. It is always open to the assessee to challenge the correctness of the valuation report and in case he establishes that such report

is not correct and reliable, expenditure on construction as per books of account is to be accepted. In this case, assessee has established that the DVO's report is not correct and reliable. Therefore, expenditure incurred on construction as shown in the books of account has to be accepted.

- **COMMISSIONER OF INCOME TAX & ANR. VS. PAI VAIBHAV HOTELS (P) LTD. (2010) 42 DTR (Kar) 121** : Search and seizure- Block assessment-Notice under s.143(2). If an assessment is to be completed under s.143(3) r/w/s. 158BC, notice under s/143(2) should be issued within one year from the date of filing of block return/ Omission on the part of the assessing authority to issue notice under s.143(2) within prescribed time can not be a mere procedural irregularity and the same is not curable. Since notice under s. 143(2) was issued beyond the period of limitation the proceedings initiated pursuant to the notice are vitiated.
- **COMMISSIONER OF INCOME TAX VS. POPULAR VEHICLES AND SERVICES LTD. (2010) 191 TAXMAN 333 (KER)** : Section 147 of the Income Tax Act, 1961. Income escaping assessment. Non-disclosure of primary facts. Assessment year 2001-02. Whether there is no presumption anywhere in provisions of Act to effect that every regular assessment completed is after due consideration of every claim under Provisions of Act and on other hand, scope of Explanation 2 to Section 147 is such that Assessing Officer is free to re-examine correctness of a regular assessment and decide whether tax assessed, rate applied, relief and allowances granted etc., are in terms of provisions of Act and if not, to revise assessment in terms of section 147. Held, yes. Whether there is no difference between proceedings completed under section 143(1) and regular assessment under section 143(3), if income chargeable to tax has escaped assessment within meaning of Explanation 2 to section 147.
- **COMMISSIONER OF INCOME TAX VS. SHAMBU MERCANTILE LTD. (2010) 325 ITR 535 (Delhi)** : Capital loss – Dividend – Transaction in securities – Dividend stripping – Loss on sale of units set off against profits on sale of units. Sale beyond statutory period of three months. Section 94(7) not attracted. Income Tax Act, 1961, s. 94(7).
- **DR.SURYAMANI DWIVEDI VS. ASSISTANT COMMISSIONER OF INCOME TAX VS. (2010) 132 TTJ (Lucknow) 240** : No addition can be made on the basis of the report of the DVO when books of accounts have been maintained wherein every expenditure relating to the construction is recorded and those books of account have not been rejected by the AO. It is always open to the assessee to challenge the correctness of the valuation report and in case he establishes that such report is not correct and reliable, expenditure on construction as per books of account is to be accepted. In this case, assessee has established that the DVO's report is not correct and reliable. Therefore, expenditure incurred on construction as shown in the books of account has to be accepted. Impugned addition deleted.
- **DR.VIRENDRA SWARUP EDUCATION VS. COMMISSIONER OF INCOME TAX (2010) 43 DTR (Lucknow)(Trib) 267** : Deduction under s.80G. Recognition of institution, etc. under s. 80G(5) – Charitable purpose of education vis-à-vis profit motive. Assessee society is carrying on the activity of running various educational institutions. Assessee had been granted registration under s. 2A and was also

granted exemption under s. 80G from 1st April, 2007 to 31st March, 2009. Cit denied the approval under s.80G(5) for the asstt. yr.2010-11 for the reason that there was huge surplus available with the assessee and it is in the nature of a commercial enterprise rather than a charitable purpose. Not justified. AO in the assessment orders for the asstt. yrs. 2005-06 to 2007-08 passed under s. 143(3) clearly stated that the surplus was nil after considering the provisions of ss.11 and 11(2). It had categorically been stated in the said assessment orders that the income applied was more than 85 per cent of the gross receipts as such, the assessment was completed on nil income, therefore, this can not be a ground to deny the exemption under s. 80G(5) was granted surplus. Furthermore, the approval for exemption under s.80G(5) was granted to the assessee upto 31st March, 2009 and without bringing any material on record that there was a change in the facts for the year under consideration vis-à-vis the earlier years the approval for the year under consideration under s.80G(5) had been denied. If there is no material change in the facts in the year under consideration vis-à-vis the earlier years then keeping in view the principle of consistency, the assessee was eligible for approval of registration under s. 80G. Nothing is brought on record to substantiate that the assessee received any capitation fee from the students and donation from anyone or hefty amount was received from the students on account of fees/funds – CIT directed to grant approval under s. 80G(5).

- **COMMISSIONER OF INCOME TAX VS. WALFORT SHARE AND STOCK BROKERS PVT. LTD. (2010) 326 ITR 1 (SC) :** Income – Computation – Expenditure not incurred in relation to total income. Condition precedent for disallowance. Proximate cause between expenditure and exempt income. Purchase of securities “Cum Dividend”. Sale at loss. Claim to set off of loss. Permissible – Loss not “Expenditure” relating to dividend Income Tax Act, 1961, ss.10(33), 14A, 94(7). Avoidance of Tax. Transaction in securities. Purchase of securities and sale thereof within three months. Loss to be ignored. Scope of provision – Income Tax Act, 1961, s. 94(7).
- **DIRECTOR OF INCOME TAX (EXEMPTION) VS. ACME EDUCATION SOCIETY (2010) 326 ITR 146 (Delhi) :** Charitable purpose – Exemption- Grant of interest free loan by assessee society to another society. Loan neither “Investment” nor “Deposit”. Both societies having similar objects, registered under Section 12A and approved under Section 80G. Loan later repaid. Assessee entitled to exemption. Income Tax Act, 1961, ss. 11(5), 12A, 13(1)(d). S.32- Depreciation- Asset purchased in the name of Director. Asset (Trucks) purchased in the name of director of the assessee (a company) just for convenience and funds for purchase of trucks had been invested by assessee. Income from trucks was offered for tax by assessee company. Held depreciation can not be denied. **CIT Vs. Varanasi Auto Sales Pvt. Ltd. (2010) 190 Taxman 60 (All)**
- **S.143(2) – Assessment – Notice – validity.** Non issue of notice under section 143(2) of the Income Tax Act, 1961 after the assessee filed the return in response to notice under Section 148 of the Income Tax Act, 1961 will vitiate the reassessment proceedings. **CIT Vs. Rajeev Sharma (2010) 40 DTR 129 (All)**
- **S.147 – Reassessment** Where the assessee had reflected the interest income earned under the head “Other Income in the statement of account which was considered by the assessing officer while framing assessment under section

143(3) of the Income Tax Act, 1961. The notice issued by the assessing officer under Section 148 of the Income Tax Act, 1961 to reopen the assessment of the assessee after four years was quashed as there was no failure on the part of the assessee in disclosing fully and truly all material necessary for assessment. **Eagle Fashion (P) Ltd. Vs. DY. CIT (2010) 40 DTR 1 (Guj.**

- **S.153C – Search and Seizure – Assessment of Income of any other person – Loose papers.** Notice under Section 153C, can be issued only where the money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned actually belong to the assessee. Notice issued on the basis of loose papers which bear the name of assessee actually not belong to assessee was without jurisdiction. **Vijaybhai N. Chandrani Vs. ACIT (2010) 38 DTR 225/231 CTR 474 (Guj.)**
- **Lodhi Property Company Ltd. Vs. Under Secretary, Department of Revenue (2010) 43 DTR (Del) 120 :** CBDT – Condonation of delay in filing return of loss – Reasonable cause – CBDT has the power to condone the delay in cases of delayed filing of return having claims of carry forward losses. Order passed by the Board rejecting the application for condonation of delay of only one day is a con speaking order. Since sufficient cause is shown by the petitioner for the delay of one day in filing the return, if the delay is not condoned, it would cause genuine hardship to the petitioner. Delay is condoned.
- **COMMISSIONER OF INCOME TAX VS. BHARTESH JAIN (2010) 43 DTR (Del) 150 :** Penalty under s. 271(1) (c) – Concealment – Treatment of business loss as speculative loss – Penalty levied on account of additions made due to change of treatment of business loss as claimed by the assessee to speculation loss as determined by the AO. Tribunal rightly deleted the penalty since a mere change of treatment of the said loss would not amount to concealment under s.271(1)(c). **CIT Vs Auric Investment & Securities Ltd. (2009) 310 ITR 310 ITR 121 (Del) followed.**
- **DIRECTOR OF INCOME TAX (EXEMPTION) VS. ACME EDUCATION SOCIETY (Del) (2010) 43 DTR (Del) 250 :** Charitable trust- Exemption under s. 11. Bar of s. 13(1)(d) r/w s. 11(5). Assessee society had given a loan of Rs.90,50,000 to another educational society whose president was brother of assessee society's president AO invoking provisions of s. 13(1)(d) r/w s.11(5) and denied benefit of s.11 to the assessee society. Not justified. Interest free loan given by the assessee- society – Not justified- Interest free loan given by the assessee society to another society having similar objects and registered under s.12A does not violate s.13(1)(d) r/w s.11(5) as the said loan was neither an "investment" nor a "deposit". Fact that the loan was interest free and had been subsequently returned is also significant.
- **DEPUTY COMMISSIONER OF INCOME TAX VS. SHREYAS S. MORAKHIA (2010) 5 ITR (Trib) (Mumbai) (SB) :** Bad Debt – Condition precedent for deduction – Condition that debt should have been taken into account in computing income of previous year or earlier year. Share broker. Sums receivable from clients for transactions undertaken on their behalf. Is trading debt of assessee. Commission

taken to profit and loss account. Deduction allowable. Income Tax Act, 1961, s.36(1)(vii), (2)(i).

- **COMMISSIONER OF INCOME TAX VS. SMATEL COLOR LTD. (2010) 326 ITR 425 (Del)** : Capital or revenue expenditure. Corporate membership fee to club. Expenditure wholly and exclusively for purpose of business and not towards capital account. Deductible as revenue expenditure. Income tax Act, 1961, s.37
- **COMMISSIONER OF INCOME TAX VS. ARISUDANA SPINNING MILLS LTD. (2010) 326 ITR 429 (P & H)** : Penalty – Concealment of income. Claim for special deduction under section 80-IA. Details regarding special deduction furnished. Claim whether allowable debatable issue. Law later settled by subsequent ruling of High Court and Supreme Court. No concealment of income or furnishing of inaccurate particulars. Penalty could not be levied. Income Tax Act, 1961, s. 271(1)(c).
- **ASSISTANT COMMISSIONER OF INCOME TAX VS. AMARNATH REDDY (2010) 132 TTH (Chennai) (TM)377** : Appeal (Tribunal) – Power of Tribunal. Subject matter of appeal vis-à-vis additional ground. Tribunal can base its decision on a ground not raised before the appellate authority or in the grounds of appeal before it. It is not precluded from considering a point which arises out of the appeal merely because such point had not been raised or urged by either party at the earlier stage of the proceedings. In the appeal filed by the Department against deletion of disallowance of unaccounted expenditure under proviso to s.69C, it is entitled to raise a fresh plea before the Tribunal to consider the allowability or otherwise of the expenditure under s. 37(1), as the subject matter of the appeal remains the same.
- **MS. NITA A. PATEL VS. INCOME TAX OFFICER (2010) 132 TTJ (Mumbai) 468** : Capital Gains – Cost of acquisition – Relevant date for indexation of cost. Property was purchased by the assessee by way of agreement dt. 27th December, 1990 and the assessee obtained the certificate under s. 269UL(3) as early as 13th Feb. 1991. AO held that since the assessee got possession of the flat after paying Rs.18,00,000 to the tenant only on 6th Jan., 1992, she held the property from that date and accordingly calculated the indexed cost of acquisition from that date. Not justified. Word 'held' used in the Explanation to s.48 refers to ownership rights only and not physical ownership or physical possession of the property. Assessee was holding the rights in the property from 27th December, 1990 and accordingly the indexation has to be allowed from that date.

CENTRAL EXCISE - BY SHRI PRAVEEN K MITTAL 9810826436

- Inputs such as explosives, lubricating oils etc are used in the mines and similarly capital goods which are exclusively used in the mines for captive use for manufacture of cement in the factory of the assessee, the cenvact credit of excise duty paid on such inputs and capital goods would be permissible. However, if from mines, the minerals are supplied and sold to various parties including the assessee, then entire Cenvat Credit would not be admissible. Madras Cements Ltd Vs. CCE 2010(257) ELT 321. (SC).

- The prosecution of the dealer alone under the Drugs and Cosmetics Act, 1940 for sale of spurious drug would be permissible without the manufacturer being impleaded as one of the accused in the complaint. State of MP Vs. Venu Veterinary 2010(257) ELT 322 (SC).
- When the bench of the CESTAT is not available for consideration of the application for waiver of pre-deposit and especially when the Department has initiated proceedings for recovery of money, the writ petition would be maintainable and the stay could be granted till the application for waiver of pre-deposit is considered by the Tribunal. Mehendra Metal Industries Vs. Union of India 2010(257) ELT 346 (Guj).
- Under Section 35G of the Central Excise Act, it is only the assessee and not the Department who is aggrieved person to file an appeal before the High Court. The appeal filed by the Department before High Court is not maintainable and is liable to be dismissed. CCE Vs. Fluid Dynamics (P) Ltd 2010(257) ELT 360 (Kar).
- Where supplementary invoices raised subsequently due to escalation in prices and differential duty has been paid by the assessee after coming to know of costs data, as determined by All India Industrial Price Indices and by Reserve Bank of India, the assessee cannot be called upon to pay interest. There is no determination of duty earlier nor there is a short payment of duty and, therefore, payment of interest does not arise. CCE Vs. BHEL 2010(257) ELT 369 (Kar).
- The onus to prove that the statement was made under duress, torture is always on the prosecution and the person making statement cannot be called upon to prove it was made voluntary. Raj Kr Damani Vs. UOI 2010(257) ELT 371 Calcutta High Court.
- In case a truck, purchased in the year 1995 at a value of Rs.6 lacs, is seized in the year 1997 and later on sold even without completion of adjudication proceedings, the department could be directed to pay the value of truck which is equal to depreciated value of truck after taking into consideration depreciation as provided under the Income Tax Act. A N Shukla Vs. UOI 2010(257)ELT 377 Allahabad High Court.
- The assessee made statement before IT Authorities that scrap generated during the course of manufacture and, therefore, department raised a plea that scrap is liable to duty. The assessee plea before the Excise Department that there was a trading of scrap. If the scrap is generated, it must lead to manufacture of excisable goods and where there was no allegation of manufacture of dutiable goods by the Department in the Show Cause. No evidence of clandestine removal of goods placed by the Department and, therefore, duty cannot be fastened on the basis of surmises. CCE Vs. Sumangal Casting (P) Ltd 2010(257) ELT 433(Tri).

- Duty paid inputs received from the supplier, transferred to another unit of the same assessee (after due permission by the Department) for doing job work by another unit. The benefit of Notification No.214/86-CE denied alleging that the both units belonging to same assessee and, therefore, not be treated as a separate job worker as they are not getting job work charges. In excise law, each unit of the one assessee is required to be registered separately and once this is so, there is no reason to deny the benefit of Notification No.214/86 by contending that both units belonging to the same company. Upadhyay Valves Manufacturers (P) Ltd Vs. CCE 2010(257) ELT 449 (Tri).

SERVICE TAX - SHRI PRAVEEN K MITTAL, 9810826436

- The Bombay High Court has restrained the Department from taking any coercive steps in respect of service tax claimed on renting of immovable property with an observations that in case challenge to the demand fails and the writ petition is dismissed in future, the assessee would be liable to pay service tax with interest. Infiniti Retails Ltd Vs UOI 2010(19) STR 801 (Bom).
- The service tax paid on garden maintenance charges and on repair of freezer installed in canteen, is allowable as a Cenvat Credit. Reliance Industries Ltd Vs. CCE 2010(19) STR 823 Tri.
- The maintenance of water cooler and house keeping service are essential requirement under the factories act and, therefore, service tax paid on such services, can be availed as a Cenvat Credit. CCE Vs. Rotork Control India (P) Ltd 2010(20)STR 29 (Tri).
- In case the transportation cost is included in the value of goods and not charged separately (although the transit insurance paid by the buyer), yet the service tax paid on such outward transportation could be availed and the contention of the Department that the title in goods passed, cannot be accepted. Priya Industrial Packaging (P) Ltd Vs. CCE 2010(20)STR 31 (Tri).
- In relation to rendering of C&F agent services, the expenses such as telephone charges, electricity charges, transportation charges, salary etc., are not includible in the total value for the purpose of calculation of "Service Tax". Polad Traders (P) ltd Vs. CCE 2010(20) STR 100 (Tri).

COMPANIES ACT 1956 BY SHRI PRAVEEN K MITTAL, 9810826436

- A petition under Section 111A of the Companies Act, 1956 challenging allotment of shares is not maintainable before the Hon'ble Company Law Board as the scope of Section 111A is limited to transfer of shares.

Morgan Ventures Ltd Vs. Blue Coast Hotels & Resorts Ltd
2010 (98) CLA 1 (Bom).

- The scope of investigation under Section 237 and the scope of inspection under Section 209A of the Companies Act, are entirely different. In a case where, the affairs of the company are being conducted in a manner to defraud its members and public which are oppressive and prejudicial, the CLB is fully competent to order investigation to protect the interests of the company and its shareholders. HB Desai Vs. Jayant Vitamins Ltd 2010(98)CLA 29 CLB.
- The issues which squarely falls within the purview of the MOU, cannot be agitated before the Company Law Board in a petition under Section 397 for oppression and mis-management unless of course of acts of oppression, mis-management and siphoning of funds are alleged against the Respondent and there are prima-evidence on records of the case file. Rajeev Kapur Vs. Grentex Wools (P) Ltd 2010(98) CLA 35 CLB.
- Where the person in whose name shares are registered did not take any steps for claiming the ownership for number of years and the buyers of those shares has filed a petition before the Company Law Board under Section 111A of the Companies Act, 1956, there is no reason to dismiss the petition on the ground of mis-joinder of the parties. Jagan Nath Vs. UTI 2010(98)CLA57 CLB.
- In a case, where the original share transfer deeds, duly executed, have been lost due to earthquake in Gujarat and because of which he is unable to produce the share transfer deeds, there is no reason to dis-allow the petition for rectification of register of members under Section 111A of the Companies Act, 1956 seeking recording of his name in the Register of Member of the Companies and also for seeking other benefits which have accrued on those shares to such a holder. Ajit R Kapadia Vs. Jaiprakash Associates Ltd 2010(98)CLA 92 CLB.
- The CLB has no power to go into the validity of charges in a petition under Section 141 of the Companies Act, 1956 before the extending the time for registration of charge. Shasra Properties (P) Ltd Vs. Homi Framroz Patrawal 2010(98) CLA 110 CLB.
- In a company where an amount has been brought in as a share capital for investment in shares and later on withdrawn without the permission of the Board of Directors although shares have already been allotted to such person. In this case, the CLB, in its discretionary powers, would be entitled to order investigation and if necessary order for cancellation of allotment of shares for the purpose of rectification of register of members on reaching a conclusion that the name of the person was entered into in the register of members with a fraudulent intention. SPA Enterprises Ltd Vs. Bangalore SEZ Corporation (P) Ltd 2010(98)CLA 124 CLB.
- The jurisdiction of the Company Law Board on a petition under Section 111(7) is summary in nature to decide about the title of any shares where

there is no dispute at all. However, in a case where there are serious disputes requiring detailed evidence to be led by the parties on a complicated questions of facts and law, the proper forum would be civil court by filing civil suit and the CLB's who has summary jurisdiction, cannot decide such matters. Harbaksh Singh Batra Vs. Larsen & Toubro Ltd 2010(98)CLA 152 CLB.

- Where a director has resigned and Form No.32 has been filed with ROC before the default of non-filing of Annual Return took place, he cannot be prosecuted by the Registrar of Companies in a criminal complaint. PL Narasimhalu Vs. AROC 2010(98) CLA (Snr)2 Madras.
- At the time of striking off the name of the company, there were unfavourable circumstances but at the time of filing of petition for restoration of name of the company under Section 560 of the Companies Act, there are favourable circumstances as the business conditions have changed for better, the petition would be maintainable and the name of the company would be restored in the register maintained by the ROC in the best interests of the company. VI Brij Fiscal Services (P) Ltd Vs. ROC 2010(155) Comp Cases 157 MP.
- If no notice has been issued by the ROC before striking off the name of the company from the register maintained by it, the petition for restoration of the name under Section 560 of the Companies Act, 1956 is liable to be allowed treated as if name was never struck off. Animesh Poly Industries (P) Ltd Vs. ROC 2010(157) Company Cases 198 MP.

**CORPORATE LAWS -- BY SHRI PRAVEEN K
MITTAL,9810826436**

- In case the Registered Office of the complainant company is located at Delhi, notice of demand was served from Delhi and the amount under the cheque has not been paid despite service of notice, the courts at Delhi would have jurisdiction to try and decide the complaint under Section 138 of NI Act for dishonour of cheque. Patiala Casting (P) Ltd Vs. Bhushan Steel Ltd 2010(172) LT 6.
- The borrower cannot challenge, by way of writ petition, a notice under Section 13(2) of Securitisation Act issued by the secured lender and the proper remedy to be invoked by the borrower is to submit detailed reply to the Show Cause Notice as the jurisdiction of the civil court is implied barred. PNB Vs. Shaikh Jumman 2010(98) CLA 195 Bom High Court.
- The allotment of shares by the company at the instance of the Respondent in such a manner that the petitioner is not able to attend the meeting of the board of directors and consequently reducing the shareholding of the petitioner into brute minority, constitute worst form of oppression and, therefore, the petition under Section 397 of the Companies Act, 1956

would be maintainable. Rajendra Kukmar Tekriwal Vs. Unique Construction (P) Ltd 2010(98) CLA 205 (Guj).

- The post dated cheque handed over at the time of signing of contract has to be treated against a liability as the amount written in cheque is payable by the person on the date mentioned in the cheque. The tendering of a cheque is also one of the mode of payment which is normally accepted mode of payment. If the liability is not construed in this manner, the very purpose of making dishonour of cheque as an offence, would be frustrated. Magnum Aviation (P) Ltd Vs. State. 2010(172) DLT 91.
- The Secured Creditor is fully entitled to invoke the provisions of Section 13(2) and 13(4) of Securitisation Act, straightaway against the guarantor – without first initiating proceedings for recovery of money against the principal borrower. The High Court on writ petition, cannot restrain the bank from proceedings against the guarantor without without first approaching the principal borrower. United Bank of India Vs. Satyawati Tondon 2010(8) SCC 110.

CIVIL LAWS - BY SHRI PRAVEEN K MITTAL, 9810826436

- The liability of guarantor is co-extensive with that of principal borrower under Section 128 of Indian Contract Act. The decree holder can straightaway file proceeding for execution of money decree against guarantor instead of proceeding first against the principal borrower. IIBI Vs. Biswanath Jhunjhunwala 2009(9) SCC 478.
- In case the Arbitrator in his Award has not awarded any interest for the period post Award period, the executing court (who is executing the Award) has not right to grant interest for the post award period. Coak Linker Vs. Coal India Ltd 2009 (9) SCC 491.
- The Central Sales Tax Forms cannot be treated as an acknowledgement of debt owed by the party. No intention to acknowledge the liability can be inferred from “C” Form. In case the suit has been filed beyond three years from the date of accrual of cause of action, the suit is liable to be dismissed by virtue of Section 3 Limitation Act. A P Varnish Works (P) Lgtd Vs. H K Gupta 2010(168) DLT 591. DHC.
- Before filing a suit for specific performance for execution of sale deed of an immoveable property, it is not necessary to serve the legal notice upon the other party. Under Limitation Act, the limitation for filing the suit is three years from the date fixed by the parties for completion of the sale or three years from the date the party came to know of the refusal from the side of the other party. Jaya Bhandari Vs. Malhan Builders 2010(172)DLT 99.DHC.
- In case a company is incorporated and has its office at Italy (and has no office in India) and enters into a contract with an India party, the Indian

party cannot initiate a legal proceedings for specific performance of that agreement in the courts in India. The court in India has no jurisdiction to try and decide the case. Piramal Healthcare Limited Vs. Diasorin SPA 2010(172)DLT 131.

- The Employee can withdraw his resignation before employer accepts the same and employee gets relieved. MCD Vs. D K Sangal 2010(171) DLT 611 Delhi DB.
- Any adjudicatory authority under any Act, before it proceeds to decide the issue before it, it must ensure that it has a jurisdiction to try and decide the matter brought before it – otherwise it would be a case of non-jurisdiction. Archie Comic Publications Vs. Purple Creations (P) Ltd 2010(172) DLT 234 (Delhi DB).

ARBITRATION LAWS - BY SHRI PRAVEEN K MITTAL

- The findings of facts arrived at by the Arbitrator cannot be challenged by the party unless such findings are completely perverse and without any documentary evidence on record. The Arbitrator rendered the Award giving sufficient reasons that the delay was attributable to DDA. If due to delay attributable to the Department, the work extended beyond the scheduled date of completion, the contractor is entitled to market prices of the materials and other escalation even if there is a provision in the contract that no escalation would be permissible. M L Mahajan Vs. DDA 2010(169) DLT 734 Delhi DB.
- It is not necessary that the arbitration agreement must be in writing. It is enough if it could be shown that the terms were reduced in writing and the consensus of the parties could be established. Nasir Husain Films (P) Ltd Vs. Saregama India Ltd 2010(2) Comp L J 393 Bombay DB.
- The appellant cannot raise new grounds or new material facts (at the time of filing of appeal before appellate court) which have not been raised in the petition under Section 34 of the Arbitration & conciliation Act, 1996 for challenging the Award of the Arbitrator before the Court. State of Maharashtra Vs. Hindustan Construction Co Ltd 2010(98) CLA 167 (SC).

CONSUMER CASES -- BY SHRI PRAVEEN K MITTAL

- No court is competent to issue directions contrary to provisions of law. The regulations of the University do not permit any student to pursue two courses at a time and in case the student is so persueing two courses simultaneously, the University is fully entitled to withhold the degree. Maharshi Dayanand University Vs. Surjeet Kaur 2010(III) CPJ 19 SC.

- If a policy holder has taken 16 life insurance policies and the factum of last policy has not been disclosed. In the present policy, the sum insured was eight times the annual income. The National Commission upheld the contention of LIC that the claim was repudiated due to non-disclosure of last policy and the contract of insurance policy is a contract of utmost faith and trust. D Chandrana Vs. LIC 2010(III)CPJ 358 NC.
- If the allottee fails to make payment within the stipulated time and the allotment is cancelled, no fault can be found with the action of DDA in cancelling the allotment. DDA Vs. Geeta Rani Goel 2010(III) CPJ 363 NC.
- If the Development Agency cancels the allotment due to non-payment of instalments within the stipulated time, no fault could be found in their action. The contention of the allottee that they have sent request through UPC for extension of time is liable to be rejected as UPC is not a reliable piece of evidence of dispatch of document. Skyline Contractors (P) Ltd Vs. State of UP 2008(8) SCC 265. Supreme Court.
- If the goods were stored in first floor area or any other area which is not covered under the Insurance Policy, the insurance company is fully justified in refusing to allow the claim despite the fact that the goods have been destroyed due to fire. Sadhu Ram Mittal Vs. United India Insurance Co Ltd 2010(III) CPJ 368 NC.
- When the Arbitrator has made an award, then the same issue cannot be agitated before the Consumer Court. A person has a choice either to go to the arbitrator or to the consumer court and once choice has been exercised, he is debarred from approaching the consumer court. Magma Fincorp Ltd Vs. AK Gupta 2010(III) CPJ 384 NC.
- The development agency is not entitled to claim interest on compounded basis and they entitled to charge only the simple interest on the delayed payments made by the allottee. HUDA Vs. Thakur Dutt 2010(III) CPJ 388 NC
- An applicant who is not successful in allotment of either plot or flat in the draw of lots held, is not a consumer under the Consumer Protection Act and, therefore, no complaint would be maintainable. HUDA Vs. J C Verma 2010CTJ 1121.

CRIMINAL LAW -- BY SHRI PRAVEEN K MITTAL

- Where the complaint (alongwith pre-summoning evidence led by the complainant) against persons, even if taken as true, do not make out a prima-facie against the accused person, such complaint is liable to be quashed under Section 482 of Cr PC – without requiring the whole trial to be completed. M N Ojha Vs. Alok Kumar Srivastava 2009(9) SCC 682

- In a criminal complaint for offence under the Insecticides Act, 1968, the complainant is required to state the manner in which the offence has been committed by the Director of the company and what were his duties and responsibilities in case the Director is sought to be made because of vicarious liability of Director as being the Director of the company. State of Delhi Vs. Rajiv Khurana 2010(98) CLA 160 SC.

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