

# **PKMG LAW CHAMBERS**

**ADVOCATES AND SOLICITORS**  
**MONTHLY LAW REPORT FOR OCTOBER, 2016**  
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LIMITED

## Circulars and Notifications Issued by Ministry Of Corporate Affairs (MCA)

Notification & Circular No.	Date of Issue	Subject
<b>1.Notification no.: S.O.3162(E) MANU/DCAF/0128 /2016</b>	<b>October 7, 2016</b>	<p><b>Subject: Appointment of Shri Maharaj Krishan Hanjura as Member (Judicial), in the National Company Law Tribunal:</b></p> <p>In exercise of the powers conferred by section 408 of the Companies Act, 2013 (18 of 2013), the Central Government hereby appoints Shri Maharaj Krishan Hanjura as Member (Judicial), in the National Company Law Tribunal in the pay scale of Rs. 67000-79000/- with effect from 22nd August, 2016 for a period of five years or till he attains the age of sixty five years, whichever is earlier.</p>
<b>2. Notification No.- S.O.3111(E) MANU/DCAF/0126 /2016</b>	<b>October 1, 2016</b>	<p><b>Subject: Appointment of Sh. Madhu Sudan Sahoo, as Chairperson of the Insolvency and Bankruptcy Board of India:</b></p> <p>In exercise of the powers conferred by Section-189 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government hereby appoints Sh.Madhu Sudan Sahoo, as Chairperson of the Insolvency and Bankruptcy Board of India with effect from 1<sup>st</sup> October, 2016 i.e. date of assumption of the charge for a period of five years or upto sixty-five years of age or until further</p>

<p><b>3. Notification From File No. : 01/13/2013 CL-V MANU/DCAF/0127 /2016</b></p>	<p><b>October 1, 2016</b></p>	<p>orders, whichever is the earlier.</p> <p><b>Subject: Companies (Incorporation) fourth Amendment Rules, 2016:</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 (Incorporation) Rules, 2014, namely: -</p> <p><b>1.</b> (1) These rules may be called the Companies (Incorporation) fourth Amendment Rules, 2016.</p> <p>(2) Save as otherwise provided, these rules shall come into force on the date of their publication in the Official Gazette.</p> <p><b>2.</b> In the Companies (Incorporation) Rules, 2014 (hereinafter referred to as the principal rules), in rule 33, for sub-rule (2), the following shall be substituted, namely:-</p> <p>"(2) subject to the provision of sub-rule (1), for effecting the conversion of a public company into a private company, a copy of order of the Tribunal approving the alteration, shall be filed with the Registrar in Form No.INC-27 with fee together with the printed copy of altered articles within fifteen days from the date of receipt of the order from the Tribunal".</p>
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**4. Order From File  
No. : 17/112/2016-  
CL-V  
MANU/DCAF/0124  
/2016**

**September  
30, 2016**

**Subject: Constitution of Expert Group to  
look into issues related to Audit firms:**

Several audit firms have represented about adverse impacts on Indian audit firms due to the structuring of certain audit firms leading to circumvention of various regulations, manner in which auditor rotation requirements is being implemented by companies, and imposition of restrictive conditions by foreign investors with regard to auditor appointment by companies. In order to examine the above and related issues and make suitable recommendations to the Government, an Expert Group consisting of the following members is hereby constituted:-

1. Shri Ashok Chawla, Chairman TERI, former Finance Secretary and CCI, Chairman.	Chairperson
2. Shri Hari S Bhartia, Co- Chairman & Managing Director, Jubilant Life Sciences Limited and past President CII	Member
3. Shri N. S. Vishwanathan, Deputy Governor, Reserve Bank of India	Member

2. The Expert Group may invite or co-opt subject matter experts relating to audit of books of accounts and financial statements, as needed. The Expert Group may give an opportunity of being heard to key stakeholders.

<p><b>5. Notification No. : GSR908(E) MANU/DCAF/0123 /2016</b></p>	<p><b>September 23, 2016</b></p>	<p><b>Subject: Companies (Management and Administration) Amendment Rules, 2016:</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 (Management and Administration) Rules, 2014, namely:--</p> <p>(1) These rules may be called the Companies (Management and Administration) Amendment Rules, 2016.</p> <p>(2) They shall come into force on the date of their publication in the Official Gazette.</p>
<p><b>8. Notification No. : SO2922(E) MANU/DCAF/0120 /2016</b></p>	<p><b>September 12, 2016</b></p>	<p><b>Subject: Central Government hereby makes the following amendments to amend Schedule V of Companies Act, 2013:</b></p> <p>In exercise of the powers conferred by sub-sections (1) and (2) of section 467 of the Companies Act, 2013, the Central Government hereby makes the following amendments to amend Schedule V of the said Act, as:-</p> <p>Remuneration payable by companies having no profit or inadequate profit <b>without Central Government</b> approval was previously 30 lakhs, 42 lakhs, 60 lakhs and 60 lakhs plus 0.01% of the effective capital in excess of 250 crores has been respectively revised as follows:</p>

		(1)	(2)
		Where the effective capital is	Limit of yearly remuneration payable shall not exceed (Rupees)
		(i) Negative or less than 5 crores	60 lakhs
		(ii) 5 crores and above but less than 100 crores	84 lakhs
		(iii) 100 crores and above but less than 250 crores	120 lakhs
		(iv) 250 crores and above	120 lakhs plus 0.01% of the effective capital in excess of Rs. 250 crores

Provided that the above limits shall be doubled if the resolution passed by the shareholders is a special resolution.

**Companies Act 1956 and 2013 Case Laws**  
**By Advocate P.K. Mittal, +91-9811044365**

✚ The Bombay High Court held that once the company court has concluded that substantial amounts are due and payable by the company to the creditor, there is no question of dismissal of winding up petition on the ground that the company is a profit making

company. **SICOM Ltd. v. Entertainment World Developers (P.) Ltd. [2016] 134 CLA (Snr.) 5 (Bom.)**

✚ **NCLT** allows conversion of private Co. private Co. to public under Companies Act, 2013 on the following grounds:

1. Transition period of Companies Act, 1956 into Companies Act, 2013 was large and MCA had issued clarification for facilitating conversion of private Co. into public (u/s 14 of Cos. Act, 2013)
2. Corresponding provisions (section 14(2) of Cos. Act, 2013) was notified by Govt. Notification dated June 1, 2016 and the NCLT rules were also issued.
3. Petitioner's reason for conversion of private Co. which includes streamlining corporate compliance and increasing efficiency in functioning.
4. Petitioner Co. has complied with Rule 68 of NCLT Rules which prescribes guidelines for implementation of conversion.
5. Conversion would not prejudice members and creditors.

**Mumbai NCLT [LSI-1257-NCLT-2016-(MUM)]**

✚ **NCLT** condones 152 days delay in filing rectification petition u/s 58-59 of Companies Act, 2013 read with Reg. 44 of Company Law Tribunal Rules applying Section 5 of Limitation Act on the following grounds:

1. Petitioner's contention that he had purchased 32,500 shares of Respondent Co. but the shares were not transferred in his name inspite of several reminders continuously.
2. Petitioner relied on SC ruling which held substantial justice deserves preference over technical consideration.
3. Section 433 of Companies Act, 2013(circumstances in which Co. may be wound up by court) provides for application of provision of Limitation Act.

**Bengaluru NCLT [LSI-1259-NCLT-2016-(BAN)]**

✚ **NCLT** has jurisdiction and power to compound offences where no fine or imprisonment or both is prescribed under the Act even after initiation of prosecution. **In Re: Teamasia Semiconductors (India) Ltd. and Ors. [2016] 134 CLA 365 (NCLT)**

✚ **Rule 3(3)(e) of Companies (Meetings of Board and its Powers) Rules, 2014-** Hon'ble National Company Law Tribunal (NCLT), New Delhi Bench held that clause (e) of sub-rule (3) of Rule-3 of Companies (Meetings of Board and its Powers) Rules, 2014 does not say anywhere that if intimation is not given at the beginning of the year, video conference is not to be provided. Accordingly, denying video conference under clause (e) of sub-rule (3) of Rule-3 is unfair. **Rupak Gupta v. UP Hotels Ltd. [2016] 134 CLA 240 (NCLT)**

✚ **Section 397/398 dealing with Oppression/Mismanagement-** Where an applicant seeks to assert a right to obtain the petitioners' shares on the basis of MoU, that being a private dispute does not come under the purview of sections 397/398 and the applicant cannot seek impleadment being a non-shareholder/non-member. **Adbhut Vincom (P.) Ltd. v. Hotel Birsa (P.) Ltd. and Ors. [2016] 134 CLA 244 (NCLT)**

✚ **Section 241 read with section 185 dealing with Consent order passed by Tribunal at the behest of warring groups-** Once any party, for passing an order, gives consent, he cannot unilaterally withdraw from the consent order or challenge the same. **Fidaali Moiz Mithiborwala and Another v. Aceros Fortune Industries (P.) Ltd. and Ors. [2016] 134 CLA 249 (NCLT)**

✚ **Hon'ble Supreme Court dismissed petition u/s 397/398 (maintainability of Oppression/Mismanagement) by Appellant (Gupta Group) against Respondent (Sanwalka Group); Strikes down share conversion with 'self-serving objective', terms bonus issue as 'sham'-**

Grounds of dismissal- 1. Appellant had not issued call notice directing Respondent to pay unpaid value of forfeited shares.

2. Issue of call notice in terms of Section 53 of Companies Act, 1956 had not been proved by Appellant.

3. Held that fastening of liability on Respondent to pay unpaid amount of forfeited shares with interest is in contrary to Articles .



4. SC observed that Co. convened EGM for increasing paid up share capital, issue of Bonus shares and conversion of preference shares to equity without issuing notice to the Respondent.

5. SC opines that 'What cannot also be lost sight of is that preference shares in question were held by the appellant who was in control of the company at that time'.

SC strikes down share conversion as Appellant has taken a number of self serving decisions. **LSI**

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

### **+ CBDT specifies procedure for generation of notice under section 143(2)**

The CBDT has issued Instruction No. 3 dated 16.09.2016 in which it has set out the procedure to be adopted by Assessing Officers for generation of notices under section 143(2) of the Income-tax Act, 1961 in cases which are selected for limited and full scrutiny under the Computer Assisted Scrutiny Selection (CASS).

### **+ ICDS Notified w.e.f. 01.04.2017 with major amendments**

S.O. 3079 (E) In exercise of the powers conferred by sub-section (2) of section 145 of the Income-tax Act, 1961 (43 of 1961, the Central Government hereby notifies the income computation and disclosure standards as specified in the Annexure to this notification to be followed by all assesseees (**other than an individual or a Hindu undivided family who is not required to get his accounts of the previous year audited in accordance with the provisions of section 44AB of the said Act**) following the mercantile system of accounting, for the purposes of computation of income chargeable to income-tax under the head "Profits and gains of business or profession" or "Income from other sources". 2.

This notification shall apply to the assessment year 2017-18 and subsequent assessment years.

**+ CIT(A) to send flyer of Dispute Resolution Scheme,2016**

As a measure to improve the awareness of the Direct Tax Dispute Resolution Scheme, 2016 among the appellants who are most likely to take the advantage of Scheme, it has been decided to focus attention on appellants whose cases are under hearing before the Commissioner (Appeal).

2. In view of the same it has been decided that CIT (A) under your jurisdiction may be directed to append the "Flyer" without signature as per Annexure enclosed while sending the notice for hearing to the assessee to familiarize him with this Scheme. **LETTER. F.NO. 279/MISC/M-61/2016**

**+ Advance Price Agreement signed crosses 100**

The Central Board of Direct Taxes (CBDT) entered into five (5) unilateral Advance Pricing Agreements (APAs) today, *i.e.*, 23<sup>rd</sup> September, 2016, with Indian taxpayers. One of these Agreements has a rollback provision in it. With these signings, the total number of APAs entered into by the CBDT has reached **103**.

**+ Extension of due date of filing of ITR,Order [F.NO.225/195/2016-ITA-II], DATED 9-9-2016**

The last date for making declarations under the Income Declaration Scheme 2016 is 30th September, 2016 which coincides with the last date of filing Income-tax returns by the taxpayers whose accounts are audited and who are required to furnish the returns of income for Assessment Year 2016-17 by 30th September, 2016 as per provisions of section 139 (1) of Income-tax Act, 1961.

In order to remove inconvenience and to facilitate ease of compliance, the Central Board of Direct Taxes, in exercise of powers conferred under section 119 of the Income-tax Act, 1961, hereby extends the 'due-date'

for furnishing such returns of Income from 30th September, 2016 to 17th October, 2016, in case of taxpayers throughout India, who are liable to furnish their Income-tax return by the said 'due-date'.

**Clarification on extension of due date for filing ITR due on 30<sup>th</sup> September**

Central Board of Direct Taxes, *vide* order under section 119 of the Income-tax Act, 1961 ('Act') dated 9 September, 2016, has extended the 'due date' for filing of income tax returns by the taxpayers whose accounts are audited under section 44AB and who are required to furnish the returns of income for Assessment Year 2016-17 by 30th September, 2016 as per provisions of section 139(1) of the Act from 30th September, 2016 to 17th October, 2016. Clarifications are now being sought whether the said extension of 'due date' would also apply for getting the accounts audited in accordance with the provision of section 44AB.

Section 44AB of the Act, stipulates that the accounts are to be got audited by an accountant and furnished in the prescribed manner before the 'specified date'. The 'specified date' under Explanation (ii) to that section has been defined to be the 'due date' for furnishing the return of income under sub-section (1) of section 139. Therefore, the extended 'due date' as per CBDT order dated 9th September, 2016 would also apply for the purpose of section 44AB of the Act.

**FAQ on Dispute Resolution Scheme, CIRCULAR NO.33 OF 2016 [F.NO.142/11/2016-TPL], DATED 12-9-2016**

The CBDT has issued a circular in the form of FAQ on Dispute Resolution Scheme clarifying various issues relating to it. It is separately attached.

**✚ NO TDS on payment, NOTIFICATION NO. 2911(E) [NO.81/2016 (F.NO.275/49/2012-IT(B))], DATED 9-9-2016**

In exercise of the powers conferred by sub-section (1F) of section 197A of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the said Act), the Central Government hereby notifies that no deduction of tax shall be made from payments of the nature specified in section 193 or section 194A or section 194-I of the said Act to the **Tirumala Tirupati Devasthanams, Tirupati, Andhra Pradesh.**

**Quarterly furnishing of 15G/15H-date extended, NOTIFICATION NO.10/2016,[F.NO.DGIT(S)/CPC(TDS)/DCIT/15GH/2016-17], DATED 31-8-2016**

Taking into account the needs of the stakeholders the due dates for uploading of Form 15G/15H are hereby extended as under:

<b><i>Sl. No.</i></b>	<b><i>Scenarios</i></b>	<b><i>Original Due Date</i></b>	<b><i>Extended Due Date</i></b>
1	Form 15G/H received during the period from 01.10.2015 to 31.03.2016	30.06.2016	31.10.2016
2	Form 15G/15H declarations received during the period from 01.04.2016 to 30.06.2016	15.07.2016	31.10.2016
3	Form 15G/15H declarations received during the period from 01.07.2016 to 30.09.2016	15.10.2016	31.12.2016
4	Form 15G/15H declarations received during the period from 01.10.2016 to 31.12.2016	15.01.2017	15.01.2017
5	Form 15G/15H declarations received during the period from 01.01.2017 to 31.03.2017	30.04.2017	30.04.2017

**Income Tax Case Laws**  
**By CA Manoj Kumar Mittal, +91-9810764620**

**DOMESTIC TAXATION**

✚ **[2016] 73 taxmann.com 325 (SC)**

IT: Where Assessing Officer had reopened assessment of assessee and sent notice to him through postal department at address contained in his PAN card, which was returned back with remark 'left', and assessee challenged reopening of assessment contending that remark 'left' was totally incorrect, since assessee had not joined postal department to question why remark 'left' was made, only on ground of non service of notice, reassessment proceedings could not be terminated SLP was dismissed.

✚ **[2016] 74 taxmann.com 6 (Pune - Trib.)**

IT : Intimation issued by Assessing Officer under section 200A and / or order passed under section 154 read with section 200A by Assessing Officer in charging fees under section 234E is appealable.

✚ **[2016] 73 taxmann.com 305 (Madras)**

IT: Where Survey Department of State government and Tahsildar of relevant zone, had consistently certified that land sold by assessee was agricultural land situated beyond 8 kms from municipal limits, Assessing Officer could not have relied on report of investigation wing to hold otherwise and to hold assessee liable to capital gains tax

**+ [2016] 73 taxmann.com 374 (Punjab & Haryana)**

IT : If monthly maintenance charges are stipulated in the rent agreement to be paid by lessor / licensee /tenant, the same shall form part of rent for the purposes of computing annual value of the property. Where, however, the rent agreement stipulates that these charges shall be paid by the owner, it is obvious and reasonable to presume that the same is factored into the rent, fee or compensation payable by the lessee or the licensee. In that event the same cannot be added to the rent agreed to be paid

**+ [2016] 73 taxmann.com 380 (Pune - Trib.)**

IT : No fees could be levied under section 234E prior to 1-6-2015, while issuing intimation under section 200A as power to charge/collect fees under section 234E was vested with revenue only on substitution of clause (c) to section 200A vide Finance Act, 2015 with effect from 1-6- 2015

**+ [2016] 73 taxmann.com 373 (Gujarat)**

Surplus made by educational institution after carrying out educational activities by itself would not indicate that institution did not exist for educational purposes but for purposes of making profit. Whether surplus so generated was utilized for purposes of educational activities also would be a relevant consideration. Thus, where Commissioner had not taken into account correct figures and was thus misguided into coming to conclusion that assessee had generated sizeable profit and rejected its application seeking exemption under section 10(23C)(vi) matter required readjudication.

**+ [2016] 73 taxmann.com 293 (SC)**

IT : Where in view of pending dispute with employees over quantum of bonus, the amount of bonus was paid to the Trust (formed for benefit of employees) and as the dispute was settled well in time the trust paid the bonus amount to employees before the due date ,

disallowance of the same cannot be made by invoking the provisions of section 40A(9) or section 43B(b). Nor any disallowance can be made for the reason that bonus was not paid by the employer-assessee directly in cash to employees and payment was made to employees by the trust.

**✚ [2016] 73 taxmann.com 273 (Gujarat)**

IT : Where company had not prescribed any uniform, payment made to employees in name of uniform allowance could not be said to be exempt under section 10(14)(i), read with rule 2BB of the Income-tax rules. The term 'uniform' in the context of dressing carries a a vastly different connotation and would necessarily include precise instructions as to the dress, design, and also colours which will achieve a uniformity in dressing at a work place or at the place of study or some such collection of group of persons belonging to by and large a common class. One of the submission of the assessee was that the dress code at work place would qualify as Uniform. However, the term 'Uniform' in the context of dressing carries a precise meaning and a meaning which is entirely different from a far more broader concept of a general dress code

**✚ [2016] 73 taxmann.com 171 (Mumbai - Trib.)**

IT: Expenses incurred by assessee a pharmaceutical company on overseas tours of Doctors to increase their sales and profitability was not an allowable expenditure as overseas trip was directed towards leisure and entertainment of Doctors and their spouses rather than being directed towards seminar for product information dissemination as no details of seminar and its course content was brought on record

✚ [2016] 73 taxmann.com 171 (Mumbai - Trib.)

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### **INTERNATIONAL TAXATION**

✚ [2016] 73 taxmann.com 302 (SC)

IT/ILT : SLP granted against High Court's ruling that even if a place of business squarely falls within definition of paragraph 1 of article 5 and is specifically listed in paragraph 2 of said article, same would, nonetheless, not be construed as a PE of an enterprise, if it falls within any of exclusionary clauses contained in sub-paras (a) to (e) of paragraph 3 of article 5 of DTAA

IT/ILT : SLP granted against High Court's ruling that where assessee, a UAE based company, in course of carrying out contract with ONGC for installation of petroleum platforms, availed services of ASL for providing marketing information and other facilities in India, since 'ASL' was not authorised to conclude contract on assessee's behalf, it could not be regarded as dependent agent PE (DAPE) of assessee in India

IT/ILT : SLP granted against High Court's ruling that where assessee-company, in order to carry out contract with ONGC for fabrication and installation of petroleum platforms, opened its project office in Mumbai, since said office was merely acting as a communication channel, it would clearly qualify as an activity of auxiliary character and, therefore, it could not be construed as assessee's PE in India



**+ [2016] 73 taxmann.com 300 (SC)**

IT/ILT : SLP granted against High Court's ruling that where comparables adopted by assessee, with or without making adjustments as a bundled transaction had been accepted by TPO, it would be illogical and improper to treat AMP expenses as a separate transaction using bright line test

**+ [2016] 73 taxmann.com 301 (SC)**

IT/ILT : SLP granted against High Court's ruling that where assessee, a French company, supplied equipments and services for GSM Cellular Radio Telephone Systems to various entities in India, amount received towards supply of software along with hardware-rather software embedded in hardware did not amount to 'royalty' under section 9(1)(vi)

**Transfer Pricing Case Laws  
By CA Manoj Kumar Mittal, +91-9810764620**

**[2016] 73 taxmann.com 277 (Ahmedabad - Trib.)**

IT/ILT: Where, assessee was having a fixed price contract with its AE and it could not increase sale price but price of raw material increased extraordinary whereas margins of comparable companies were not restricted by fixed sale price, margin of assessee-company would definitely be less due to increase in the price of raw material qua sale price and therefore, adjustment in respect of substantial increase in cost of raw material, had to be made for working of correct PLI.

**[2016] 73 taxmann.com 265 (SC)**

IT/ILT : SLP granted against High Court's ruling that AMP expenses incurred in India by assessee-subsiary of foreign AE can be categorized as an international transaction under section 92B

IT/ILT : SLP granted against High Court's ruling that in view of retrospective amendment of section 92CA introduced by Finance Act, 2012, TPO is empowered to adjudicate on transactions which have not been reported by assessee under section 92E.

**[2016] 73 taxmann.com 264 (Delhi - Trib.)**

IT/ILT: Where assessee-company rendered marketing support services to its AE, a company engaged in KPO services and a company earning its primary source of income from manufacturing, trading and indenting activities, could not be accepted as comparables while determining ALP

**Corporate Laws**  
**By Advocate PK Mittal, +91-9811044365**

**Insolvency and Bankruptcy Code, 2016**

**Subject: Date of establishment of Insolvency and Bankruptcy Board  
of India**

**Notification No.- S03110(E)**

**Dated October 1, 2016**

In exercise of the powers conferred by sub-section (1) and (3) of section 188 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government hereby appoints 01st October, 2016 as the date of establishment of Insolvency and Bankruptcy Board of India. The head office of the Insolvency and Bankruptcy Board of India shall be at New Delhi.

**[F. No. 30/2/2016-Insolvency Section]**

## SARFAESI LAW:

- ✚ Himachal Pradesh High Court, relying on section 34 of the SARFAESI Act, held that no civil court has jurisdiction to entertain any suit for a matter in which a Tribunal or Appellate Tribunal is empowered to determine since SARFAESI has overriding effect over other provisions. **Bharat Healthcare Ltd. and Ors. v. Authorised Officer, Punjab National Bank and Ors. MANU/HP/1151/2016**

### Recovery of Debts due to Banks and Financial Institutions Act, 1993:

- ✚ There is nothing lacking in the act so as to borrow anything from the Companies Act till the stage the secured assets are sold by the secured creditors in accordance with the provisions in the SARFAESI Act and the Rules. At the post sale stage, the rights of the persons or parties having any stake in the sale proceeds are also taken care of by Section 13(9) and its five provisos. If borrower is a company in liquidation, the sale proceeds have to be distributed in accordance with the provisions of section 529A of the Companies Act even where the company is being wound up after coming into force of the SARFAESI Act. If the secured creditor of such company opts to stand out of the winding up proceedings, it is entitled to retain the sale proceeds of its secured assets after depositing the workmen's dues with the liquidator in accordance with the provisions of Section 529A of the Companies Act. **Authorized Officer v. Official Liquidator of Jhagadia Copper and Ors. MANU/GJ/1813/2016**

### Sick Industrial Companies (Special Provisions) Act, 1985:

- ✚ The petitioner filed the application under Order 7 Rule 11 CPC that the defendant/petitioner company has a pending enquiry under BIFR and so the suit for the recovery of credit amount by the company be dismissed. Delhi High Court held that where 3/4<sup>th</sup> or more of the secured creditors get together to take measures under SARFAESI Act, it is not necessary for them to obtain BIFR

permission before taking such measure. **Indo American Electricals Ltd. v. Sanjay Gupta MANU/DE/2597/2016**

✚ The Appellant filed an application alleging that when the matter has been registered with BIFR under SICA, the arbitral proceedings regarding the same be suspended. Delhi High Court held that an arbitral proceeding is not a “suit” within the meaning of section 22(1) of SICA and a reference to BIFR would not bar continuance of such proceedings. **Goyal MG Gases Pvt. Ltd. v. SBQ Steels Ltd. MANU/DE/2432/201**

**SEBI Notifications and Circulars**  
**By CS P.K. Mittal, Advocate, +91-9811044365**

<b>Notification &amp; Circular No.</b>	<b>Date of Issue</b>	<b>Subject</b>
<b>1. Circular No.- SEBI/HO/MRD/DSA/CI R/P/2016/110</b>	<b>October 10, 2016</b>	<b>Subject: Exclusively listed companies of De-recognized/Non-operational/exited Stock Exchanges placed in the Dissemination Board (DB).</b> SEBI, in the interest of the investors of ELCs, clarifies as follows: <b>a.</b> The respective nationwide stock exchanges hosting the ELC on its DB would hereinafter be referred as ‘designated stock exchange’. <b>b.</b> The ELCs on the DB would be required to exercise one of the two options as mentioned in Para 4.c or 4.d of the circular. <b>c.</b> Raising capital for listing on Nationwide Stock Exchanges. In

		<p>order to facilitate listing on nationwide stock exchanges, the ELCs on the DB shall be allowed to raise capital for meeting the listing requirements through preferential allotment route in terms of the provisions under the Issue of Capital and Disclosure Requirements Regulations, 2009 (ICDR).</p>
<p><b>2. Circular No.- IMD/FPIC/CIR/P/2016/1 07</b></p>	<p><b>October 3, 2016</b></p>	<p><b>Subject: Investments by FPIs in Government Securities:</b> SEBI had issued circulars CIR/IMD/FPIC/8/2015 dated October 06, 2015 and IMD/FPIC/CIR/P/2016/45 dated March 29, 2016 regarding the allocation and monitoring of FPI debt investment limits in Government securities. It has been decided to enhance the limit for investment by FPIs in Government Securities, for the next half year, as follows:</p> <ul style="list-style-type: none"> <li>a. Limit for FPIs in Central Government securities shall be revised to INR 148,000 cr on October 03, 2016 and INR 152,000 cr on January 02, 2017 respectively.</li> <li>b. Limit for Long Term FPIs (Sovereign Wealth Funds (SWFs), Multilateral Agencies, Endowment Funds, Insurance Funds, Pension Funds and Foreign Central Banks) in Central</li> </ul>

		<p>Government securities shall be enhanced to INR 62,000 cr and INR 68,000 cr on October 03, 2016 and January 02, 2017 respectively.</p> <p>c. The limit for investment by all FPIs in State Development Loans (SDL) shall be enhanced to INR 17,500 cr on October 03, 2016 and INR 21,000 cr on January 02, 2017 respectively.</p>
<p><b>3. Circular No.- SEBI/HO/CDMRD/DMP /CIR/P/2016/105</b></p>	<p><b>September 28, 2016</b></p>	<p><b>Subject: List of Commodities Notified under SCRA:</b></p> <p>Pursuant to the repeal of the Forward Contracts (Regulation) Act, 1952 (FCRA) and amendment to the Securities Contracts (Regulation) Act, 1956 (SCRA), the Central Government, in exercise of the powers conferred by clause (bc) of section 2 of the SCRA and in consultation with the SEBI, have vide Notification No. S.O. 3068(E) dated September 27, 2016 notified the goods specified therein, for the purpose of clause (bc) of section 2 of the SCRA with effect from the date of the said notification.</p>
<p><b>4. Circular No.- SEBI/HO/CDMRD/DMP /CIR/P/2016/102</b></p>	<p><b>September 27, 2016</b></p>	<p><b>Subject: Sharing of Information in case of Declaration of Member as Defaulter incase of Multiple Membership:</b></p>

		As per Section 131(B) of Finance Act, 2015 all rules, directions, guidelines, instructions, circulars, or any like instruments, made by the erstwhile FMC or the Central Government applicable to recognised associations under the FCRA would continue to remain in force for a period of one year from the date on which FCRA was repealed, or till such time as notified by SEBI, whichever is earlier.
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## SEBI Laws

By Advocate P.K. Mittal, +91-9811044365

- ✚ In terms of Regulation 7 of the Debenture Trustee Regulations, a person can act as a debenture trustee only if he is either a scheduled bank or a public financial institution or an insurance company or a body corporate. The entity or its representatives are not qualified to be appointed as a 'debenture trustee'. If done so, it will violate section 12(1) of the SEBI Act, 1992. **In Re: Matrubhumi Projects (I) Limited and Ors. MANU/SB/0244/2016**
- ✚ The liability of the company and the directors to repay under section 73(2) of the Companies Act, 1956 would remain until the whole of the subscription amount along with the interest is refunded to the allottees/investors. Therefore, the directors (irrespective of whether they continue or resign) who were present during the period when the company made the offer and allotted NCDs shall be liable for violation of Section 56, 60 and 73 of the Companies Act, 1956 and the

SEBI(Issue and Listing of Debt Securities) Regulations, 2008. **In Re: Jugantor Realty Limited and Ors. MANU/SB/0245/2016**

**Civil Laws**  
**By Advocate Praveen K Mittal, +91-9810826436**

- ✚ Where the revision has been filed with an application for condonation of delay, it is appropriate to observe that while deciding an application filed in such cases, the court has to keep in mind that the special period of limitation has been prescribed under the Consumer Protection Act,1986 for filling appeals and revisions in Consumer matters and the object of expeditious adjudication of the consumer disputes will get defeated if the court was to entertain highly belated petitions filed against the orders of the Consumer Foras. **Huda and Ors. V. Sandeep Kumar and Ors. MANU/CF/0489/2016**
- ✚ The interest of the persons on whose behalf the claim is brought must be common grievance which they seek to get addressed. The defect or deficiency in the goods purchased, or the services hired or availed of by them should be the same for all the consumers on whose behalf or for whose benefit the complaint is filed. Therefore, the oneness of the interest is akin to a common grievance against the same person. **Parikshit Parashar v. Universal Buildwell Pvt. Ltd. And Ors. MANU/CF/0500/2016**
- ✚ **Section 3 of the Competition Act, 2002 dealing with Anti-competitive agreements-** The Delhi High Court held in this case that Mere formation of an association does not violate section 3 if it has not resulted in appreciable adverse effect on competition. **Jyoti Sawroop Arora v. The Competition Commission of India and Ors. MANU/DE/1515/2016**



- ✚ **Section 138 of Negotiable Instruments Act, 1881 dealing with Dishonour of Cheque-** Post dated cheque is for discharge of debt or liability depends on the nature of transaction. Where on the date of the cheque liability or debt exists or the amount has become legally recoverable, section 138 would get activated and not otherwise. Once the loan was disbursed and installment has fallen due on the date of the cheque, dishonour of such cheque would fall u/s 138 since cheque undoubtedly represents outstanding liability. **Sampelly Satyanarayan Rao v. Indian Renewable Energy Development Agency Ltd. [2016] 134 CLA 341 (SC)**

## Arbitration Laws

By Advocate Praveen K Mittal, +91-9810826436

- ✚ **Section 45 of Arbitration and Conciliation Act, 1996 read with Order 23, rule 1(4) of Code of Civil Procedure, 1908-**It is a well settled principle of law deducible from the above provisions that where an application for withdrawal of suit has been allowed without any permission to refile the suit on the same cause of action, no further suit would be permissible. Hence, no second application u/s 45 can be maintained. **Vikram Bakshi and Another v. Connaught Plaza Restaurants (P.) Ltd. And Others [2016] 134 CLA 382 (NCLT)**
- ✚ **Section 37 of Contract Act, 1872 dealing with 'Assignment' and Section 45 of Arbitration and Conciliation Act, 1996 dealing with Reference to arbitration-** The rights and obligations flowing out of an agreement between the three parties are independent, which can be determined only by an elaborate enquiry. As per settled law, there can be assignment of existing right but not of burden of contract.

✚ Arbitration agreement is an independent agreement though contained in the same document which contains substantive contract. Scope of enquiry u/s 45 by the judicial authority dealing with the suit is confined only to the question whether arbitration agreement are void, inoperative or incapable of being performed. A judicial authority is bound to refer parties to arbitration if there is an arbitration agreement between them. **Sasan Power Ltd. V. North American Coal Corporation India (P.) Ltd. [2016] 134 CLA 312 (SC)**

**Prevention of Money Laundering Act  
By Advocate Pradeep K Mittal, +91-9811044365**

**Prevention of Money-laundering (Restoration of Confiscated  
Property) Rules, 2016**

**GSR 913(E) dated 26<sup>th</sup> September 2016**

In exercise of the powers conferred by sub- section (1) and clause (x) of sub- section (2) of section 73, read with sub-section (8) of section 8 of the Prevention of Money-laundering Act, 2002, the Central Government makes rules which shall be called the Prevention of Money-laundering (Restoration of Confiscated Property) Rules, 2016 and shall come into force on the date of their publication in the Official Gazette. **[2016] 134 CLA (St.) 87**

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