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MONTHLY LAW REPORT FOR AUGUST, 2016
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Circulars and Notifications Issued by Ministry Of Corporate Affairs (MCA)

| Notification & Circular No. | Date of Issue | Subject |
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| 1. Notification No.- S.O. 2563(E), | August 9, 2016 | <p>Subject: Appointment of judicial and technical members in NCLT</p> <p>In exercise of the powers conferred by section 408 of the Companies Act, 2013, the Central Government hereby appoints the persons as Judicial and Technical Members in the National Company Law Tribunal in the pay scale of Rs. 67000-79000/- with effect from the dates mentioned against each of them in this circular for a period of five years or till he attains the age of sixty five years, whichever is earlier</p> |
| 2. Notification No.- 25/2/2016-NCLT | August 5, 2016 | <p>Subject: Dress code for appearing before NCLT</p> <p>In exercise of the powers conferred on Tribunal by rule 51 of National Company Law Tribunal Rules, 2016. It has been decided to issue following dress code for President, Members, Authorized Representatives and for the parties in person to be followed during the proceeding of the Tribunal:</p> <p>(i) For President and Members: The dress of the President and Members shall be white or striped or black trouser with black coat over white shirt and band or buttoned-up black coat and band. In the case of a female President or a Member, the dress shall be black coat over a</p> |

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| | | <p>white saree.</p> <p>(ii) For Authorized Representatives: Every authorized representative as provided in section 432 of the Act shall appear before the Tribunal in his/her professional dress if any, and if there is no such dress, male, in a suit or buttoned-up coat over a trouser or national dress that is a long buttoned-up coat and a female in a coat over white or any other sober coloured saree or in any other sober and decent dress.</p> <p>(iii) For Parties in Person: Parties appearing in person before the Tribunal shall be properly dressed.</p> |
| <p>3. Circular No.- RBI/2016-17/34</p> | <p>August 4, 2016</p> | <p>Subject: Implementation of Indian Accounting Standards</p> <p>1. The Ministry of Corporate Affairs (MCA), Government of India has notified the Companies (Indian Accounting Standards) Rules, 2015 on February 16, 2015. A reference is also invited to the Press Release dated January 18, 2016 issued by the MCA outlining the roadmap for implementation of International Financial Reporting Standards (IFRS) converged Indian Accounting Standards for banks, non-banking financial companies, select All India Term Lending and Refinancing Institutions and insurance entities.</p> <p>2. In this connection, it is advised that select All-India Term Lending and Refinancing Institutions(AIFIs) (Exim Bank, NABARD, NHB and SIDBI), shall follow the Indian Accounting Standards as notified under the</p> |

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| | | Companies (Indian Accounting Standards) Rules, 2015, subject to any guideline or direction issued by the Reserve Bank in this regard. |
| 4. Notification No. 25/2/2016-NCLT | August 2, 2016 | <p>Subject: Fee for Inspection of Records under Rule 114 of NCLT Rules, 2016</p> <p>In exercise of the powers conferred on National Company Law Tribunal by the rule 51 of NCLT Rules, 2016, Fee for inspection is hereby prescribed Rs. 200/- per inspection for the records as provided under rule 114 of the NCLT Rules, 2016</p> |
| 5. File No.10/03/2016-NCLT | August 2, 2016 | <p>Subject: Constitution of NCLT, Mumbai Bench</p> <p>In Partial modification of Order of even number dated 05.7.2016, the National Company Law Tribunal, Mumbai Bench is constituted for the purpose of exercising and discharging the Tribunal's powers and functions.</p> |
| 6. File No.10/03/2016-NCLT | August 2, 2016 | <p>Subject: Constitution of NCLT, New Delhi Bench</p> <p>In partial modification of Order of even number dated 5.7.2016, the National Company Law Tribunal, New Delhi Bench is constituted for the purpose of exercising and discharging the Tribunal's powers and functions.</p> |

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| <p>7. F.No. 01/04/2013, [2016] 133 CLA (St.) 174</p> | <p>July 19, 2016</p> | <p>Subject: Companies (Share Capital and Debentures) Third Amendment Rules, 2016</p> <p>The key highlights in the Principal Rule i.e. Companies (Share Capital and Debentures) Rules, 2014 are as under:</p> <p>In Rule 4 (1) a proviso is inserted which states that a company may issue equity shares with differential voting rights on expiry of five years from the end of financial year in which such default was made good.</p> <p>In Rule 8(4) a proviso is inserted which provides a startup company may issue sweat equity shares not exceeding fifty per cent of its paid up upto five years from the date of its registration.</p> <p>In Rule 12(1)(c) after sub clause (ii) a proviso is inserted which says that conditions mentioned in sub clause (i) and (ii) shall not apply on startup company for five years from the date of its registration.</p> <p>In Rule 18(7), where a company intends to redeem debentures prematurely, the amount to be transferred in Debenture Redemption Reserve Account even if it exceeds the limits as specified.</p> |
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| <p>8. F.No.1/23/2013, [2016] 133 CLA (St.) 173</p> | <p>July 19, 2016</p> | <p>Subject: Compliance Requirements of a Foreign Airline Company</p> <p>The relaxation is given to a foreign company which is an 'airline company'-MCA clarified that following will be deemed to be sufficient compliance u/s 381(1)(a) by a foreign company which is an 'airlines company' having a share capital, if in respect of the period ending on or after 31st March, 2016, it submits:</p> <p>i) documents relating to copies of latest consolidated financial statements of the parent foreign company, as submitted by it to the prescribed authority in the country of its incorporation under the provisions of the law for the time being in force in that country. Provided that where such documents are not in English language, there shall be annexed to it a certified translation thereof in the English language.</p> <p>(ii) in respect of its Indian Business operations, a statement of receipts and payments for the financial year, duly authenticated by a practicing Chartered Accountant in India or a firm or a Limited Liability Partnership of practicing Chartered Accountants in India.</p> <p>(iii) the documents required to be filed with Registrar of Companies under Rule 4(2) of the Companies (Registration of Foreign Companies) Rules, 2014.</p> |
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Companies Act 1956 and 2013 Case Laws
By Advocate PK Mittal, +91-9811044365

- **Powers of CLB (now Tribunal) to call meetings u/s 186 of the Companies Act, 1956-** An order of CLB (now Tribunal) u/s 186 cannot be passed unless it is impracticable to all the three contingencies existing, that is calling, holding and conducting meetings. Relief u/s 186 could be invoked only when all doors are closed to the company to function, especially when shareholders' whereabouts are not known and when they have abandoned the company. When the shareholders are present in the meeting and willing to participate in the meeting, it cannot be held that it is impracticable to call the meeting. **VIL Ltd. v. Raibareily Allahabad Highway (P.) Ltd., [2016]133 CLA 156 (CLB).**
- **Rectification of Register of Members-** Section 111(4) of the Companies Act, 1956 read with Article 137, 3, 4 and 5 of Limitation Act, 1963. In the instant case, when there is no limitation period of filing an application u/s 111(4), the question arises that whether "CLB or Tribunals" be considered the "Courts" for considering the applications and imparting relief to the aggrieved. It was held that CLB is not a "Court" by explaining the difference; "Courts" refers to places where justice is administered or refers to Judges who exercises judicial functions whereas "Tribunals" are special alternative institutional mechanisms brought into existence to deal with special or statutory laws. **M Sulochana Neelkanth Kalyani v. Takle Investments Co., [2016] 133 CLA 169 (Bom.)**
- **Grounds on which no ratification can be done by Official Liquidator-** Where the suit is filed on behalf of company prior to winding up order held to be infirm and not maintainable as the consent of other directors is not obtained under Article 17A of the Articles of Association of the company. The contention that the Official Liquidator can step into the shoes of the plaintiff and ratify the filing cannot be accepted, as it would amount to opportunistic misuse of the provisions of law. It was held by Bombay High Court that there can be

no ratification by Official Liquidator of such a failure, as the entire object of ratification would be to cure a defect which was capable of being complied with by the company in the first instance. **Subhiksha Trading Service Ltd.v. Azim Premji, [2016] 133 CLA 31 (Bom.)**

- **Case first referred to Arbitrator-** Section 397/398 of Companies Act, 1956 read with Section 16 of Arbitration Act and Regulation 44 of CLB Regulations, 1991- CLB (now Tribunal) cannot deal with the allotment of shares and other issues pending before Sole Arbitrator when the status quo order has been passed by the sole Arbitrator appointed by the Division Bench of High Court. **Chiranjiv Singh v. Omega Exports, [2016] 133 CLA 64 (CLB).**
- **Rectification of Register of Members-** Section 58 and 59 of Companies Act, 2013 read with Section 111 of Companies Act, 1956 in case of refusal to transfer shares- Where there is involvement of complicated issues that involves examination of forgery and fabrication of records, forensic examination of signatures in documents; any objections of the company regarding registration of transfer shall be considered by CLB (now Tribunal) only after the civil court has adjudicated the matter. **K Ravinder Reddy v. Alliance Business School and Ors., [2016] 133 CLA 77 (CLB).**
- **Suit- Dispute between shareholders and directors-** No shareholder can say that because the company is a party to arbitration agreement, he should be allowed to initiate arbitration proceedings and claim any relief in the said proceedings. It is the company alone who can defend or initiate such proceedings and third party is not concerned with the inter se disputes. If a third party is party to fraud in action in which a decree or award is passed affecting the valuable right of a company and is prejudicial to the interest of company, the shareholder can sue the miscreant directors. **Starlight Real Estate v. Jagrati Trade Services, [2016] 132 CLA 351 (Cal.)**
- **Matters to be dealt by Company Court-** Company Court u/s 433 of the Companies Act, 1956 is not entrusted with the work of making enquiries about the genuineness of the documents submitted in

connection with the incorporation of company, more particularly one certificate of incorporation had been issued by ROC. While exercising its jurisdiction, highly disputed or complicated questions of fact also fall outside the domain of the company court which is purely the subject matter of adjudication by civil court and the winding up petition is not maintainable. **Vinod Krishan v. Amritsar Swadeshi Textile Corpn.,[2016] 132 CLA 368 (P&H).**

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

- **CBDT Prescribes Standard Operating Procedure (SOP) For Handling AIR Transactions Without Valid PAN**

The CBDT has vide directive dated 22nd July 2016 prescribed the Standard Operating Procedure (SOP) to be followed by the field staff for handling AIR transactions without valid PAN. The CBDT has also vide letter dated 25th July 2016 revised the template of the letter to be addressed by the field officers while handling reported cases of AIR transactions.

- **CBDT Instruction On When A “Limited Scrutiny” Case Can Be Converted Into A “Complete Scrutiny” Case By The AO**

The CBDT has issued Instruction No. 5/2016 dated 14th July 2016 by which it has, in order to ensure that maximum objectivity is maintained in converting a case falling under ‘Limited Scrutiny’ into a ‘Complete Scrutiny’ case, issued guidelines which require the Assessing Officer to form a reasonable view that there is possibility of under assessment of income if the case is not examined under ‘Complete Scrutiny’. It is stated that the monetary limits and requirement of administrative approval from Pr. CIT/CIT/Pr. DIT/DIT, as prescribed in Para 3(d) of earlier Instruction dated 29.12.2015, shall continue to remain applicable

- **CBDT Directs Expeditious Issue Of Refunds In Non-CASS Cases & Relaxation Of S. 245 Requirements**

With a view to provide relief to small taxpayers, the CBDT has issued an Office Memorandum dated 14th July 2016 directing that refunds up to Rs. 5,000 as also refunds in cases where arrear demand is up to Rs. 5,000 in non-CASS cases, may be issued expeditiously without any adjustment of outstanding demand under Section 245 during the Financial Year 2016-17. The CBDT has directed the exercise to be completed and a compliance report be sent to the Board by 29th July, 2016

- **Income Declaration Scheme 2016 – Govt Revises Time Schedule for Making Payments Under The Scheme**

The Ministry of Finance has issued a press release by which it has stated that the time schedule for making payments under the Income Declaration Scheme 2016 have been revised as follows.

a minimum amount of 25% of the tax, surcharge and penalty to be paid by 30.11.2016; (ii) a further amount of 25% of the tax, surcharge and penalty to be paid by 31.3.2017; and (iii) the balance amount to be paid on or before 30.9.2017

- **CBDT Instruction For Compulsory Manual Selection Of Cases For Scrutiny During FY 2016-2017**

The CBDT has issued Instruction No. 4/2016 dated 13th July 2016 in which it has set out the criteria for compulsory manual selection of cases for scrutiny during the Financial Year 2016-2017

- **CBDT Issues Circular (4th Clarification) On The Income Declaration Scheme, 2016**

The CBDT has issued Circular No. 27 of 2016 dated 14th July 2016 to further provide clarifications to various doubts and concerns raised by the stakeholders with regard to the Income Declaration Scheme, 2016 which came into effect on 1st June, 2016. The CBDT has in particular clarified the query whether the payment under the Scheme can be made out of undisclosed income without including the same in the income declared, thereby bringing down the effective rate of tax,

surcharge and penalty payable under the Scheme to around 31%. The CBDT has already issued three sets of FAQs vide Circular Nos. 17, 24 & 25 of 2016

- **Finance Ministry Directive Regarding Issues Relating To Compliance Procedure For The Excise Duty, Records To Be Maintained And Other Relevant Administrative Issues**

The Ministry of Finance has issued a Press Release stating that the Government has accepted the recommendations of the Sub-Committee of the High Level Committee to interact with Trade & Industry on Tax Laws on issues relating to compliance procedure for the excise duty, records to be maintained and other relevant administrative issues.

- **CBDT Modifies Format Of Statutory Scrutiny Notice Issued U/s 143(2) Of The Income-Tax Act**

The CBDT has issued a directive dated 11th July 2016 stating that the statutory notice to be issued under section 143(2) of the Income-tax Act has been modified. There will henceforth be three formats of the said notice namely: (i) Limited Scrutiny, (ii) Complete Scrutiny and (iii) Manual Scrutiny. The revised format of 143(2) notice(s) is attached. The CBDT has directed that all scrutiny notices shall henceforth be issued in these revised formats

- **Declarations Made Under The Income Declaration Scheme 2016 Shall Remain Confidential: Central Government's Order**

The Ministry of Finance has issued an order dated 6th July, 2016 directing, in exercise of the powers conferred by sub-section (2) of section 138 of the Income-tax Act, 1961, that no public servant shall produce before any person or authority any such document or record or any information or computerised data or part thereof as comes into his possession during the discharge of official duties in respect of a valid declaration made under 'The Income Declaration Scheme, 2016', contained in Chapter IX of the Finance Act, 2016

- **CBDT Press Release Deferring Applicability Of ICDS To AY 2017-18**

The CBDT has issued a press release dated 6th July 2016 stating that it has been decided that the Income Computation and Disclosure

Standards (ICDS) notified under section 145 (2) of the Income -tax Act, 1961 shall be applicable from 1.4.2016 i.e. previous year 2016-17 (Assessment Year 2017-18). The notification to this effect will be issued shortly

- **CBEC Circular On Recovery of Confirmed Demands During The Pendency Of A Stay Application**

The CBEC has issued a Circular No. 1035/23/2016-CX dated 4th July 2016 in which it has laid down the law and the procedure to be followed before recovery proceedings are initiated against an assessee. The CBEC has directed that in cases where a stay application is pending before the Commissioner (Appeals) or CESTAT for periods prior to 06.08.2014, no recovery shall be made during the pendency of the stay application. In cases where demand is confirmed by the CESTAT or the High Court, recovery proceeding may be initiated after a period of sixty days from the date of the order provided that no stay is in operation

- **CBDT Press Release And Circular Of Further Clarifications On The Income Declaration Scheme, 2016**

With regard to The Income Declaration Scheme, 2016, the CBDT had earlier Circular No. 17 of 2016 dated 20th May, 2016 and Circular No. 24 of 2016 dated 27th June 2016 in which it has clarified queries received from the public about various provisions of the Scheme. The CBDT has now issued Circular No. 25 of 2016 dated 30th June 2016 to clarify further issues relating to the scheme

- **CBDT Notifies Final Rules Relating To Manner Of Determination Of Fair Market Value And Reporting Requirement For Indian Concerns Under Indirect Transfers Provisions Of S. 9(1) of the Income-tax Act, 1961**

The CBDT has issued Notification No. 55/2016 dated 28th June 2016 by which it has notified Rules 11UB and 11UC which set out the manner of determination of fair market value and reporting requirement for Indian concerns under the Indirect transfer provisions in section 9(1) of the Income-tax Act, 1961.

Income Tax Case Laws

By CA Manoj Kumar Mittal, +91-9810764620

Domestic Taxation

- IT : Where assessee, a dealer in both shares and property, incurred loss on derivatives being future option loss on transactions entered on NSE, he would be entitled to set off same against profit on sale of property. **[2016] 71 taxmann.com 345 (Kolkata - Trib.)**

- IT : Where share transactions were entered into by assessee electronically (screen based) in recognised stock exchanges viz. BSE, NSE, and said transactions were intra day and no delivery of shares had taken place, loss therefrom would be speculative in nature but could not be termed as sham and, thus, said loss deserved setting off. **[2016] 71 taxmann.com 345 (Kolkata - Trib.)**

- IT : For an assessee to claim expenditure on account of commission, assessee has to prove that services were in fact rendered by recipient of commission from assessee. **[2016] 71 taxmann.com 345 (Kolkata - Trib.)**

- Where an EOU, engaged in manufacture and export of standardized herbal extracts and fine chemicals, spent money in supplying seedlings and fertilizers to farmers and also incurred other cultivation expenses, said cultivation expenses was to be allowed as revenue expenditure. **[2016] 71 taxmann.com 298 (Karnataka)**

- Compensation received by assessee an Indian publication house upon settlement of a trademark dispute in which trademark itself had been cancelled would be capital receipt not taxable under section 28(va)(b). **[2016] 71 taxmann.com 319 (Hyderabad - Trib.)**

- Effluent Treatment Plant is a water pollution control equipment, eligible for 100 per cent depreciation. **[2016] 71 taxmann.com 320 (Mumbai - Trib.)**
- Where gifts of Rs. 5 to 7 lakh were made to assessee by donors who were mere acquaintances and gifts amounted to sum total of their income of last 4 to 5 years, and they themselves could never make investment over Rs. 1 lakh in past many years, in absence of capacity of donors to give gifts, same were to be held fake and assessed to tax as deemed income in hands of assessee. **[2016] 71 taxmann.com 340 (Pune - Trib.)**

INTERNATIONAL TAXATION

- IT/ILT : MFN clause of the Protocol, which forms part of the India-France DTAA, automatically becomes applicable. There is no requirement to have a separate notification incorporating the beneficial provisions of the DTAA between India and UK as forming part of the India- France DTAA. **[2016] 72 taxmann.com 1 (Delhi).**
- IT/ILT : Management services provided by French entity not be treated as 'FTS' as there is MFN clause in India-France DTAA and definition of FTS occurring in India-UK treaty clearly excludes management services. **[2016] 72 taxmann.com 1 (Delhi)**

Transfer Pricing Case Laws
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- Where assessee-company gave certain advance to its AE for expansion of its business abroad which was converted into equity within three months, it could not be regarded as international transaction of interest free loan merely on ground that same was reflected in that way by assessee inadvertently in Form 3CEB. **[2016] 71 taxmann.com 300 (Delhi - Trib.)**

- Where assessee had incurred huge expenditure on account of selling and distribution as well as promotion for trading of imported goods in India and applied RPM, TPO was justified in rejecting resale price method as business model of assessee was not comparable with that of comparable companies since they were not incurring such expenditure on selling and distribution and sales promotion. **[2016] 71 taxmann.com 338 (Bangalore - Trib.)**

Corporate Laws
By Advocate PK Mittal, +91-9811044365

Insolvency and Bankruptcy Code, 2016

Subject: Section 188 to 194 of the Code to get effective

Notification No.- S.O.2618(E)

Dated August 8, 2016

In exercise of the powers conferred by the proviso to sub-section (3) of section 1 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government hereby appoints the 5th of August, 2016 as the date on which the provisions of sections 188 to 194 (both inclusive) of the said Code shall come into force.

SARFAESI LAW:

Subject: List of NBFCs notified as Financial Institutions under SARFAESI Act, 2002.

Notification No.- S.O. 2641(E)

Dated: August 5, 2016

In exercise of the powers conferred under sub-clause (iv) of clause (m) of sub-section (1) of section 2 read with section 31A of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002), the Central Government hereby specifies the some non-banking financial companies, which are covered under clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934) and registered with Reserve Bank of India, having **asset of five hundred crore rupees and above** as per their last audited balance sheet, as "financial institutions" and hereby directs in public interest that all provisions of the said Act, shall apply to such financial institutions with the exception that the provisions of sections 13 to 19 shall apply only to such security interest which is obtained for securing repayment of secured debt with principal amount of rupees **one crore** and above.

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

- In the present case, the following highlights have been made:
 - a. A DRT would be entitled to order the sale of the properties of the debtor through its Recovery Officer only after notice to the Official Liquidator.
 - b. If a financial corporation seeks to sell or transfer the assets of borrower company-in-liquidation, the said power could be exercised only after obtaining the permission from the Company Court.
 - c. Where the proceedings under the Recovery of debts due to Banks and Financial Institutions Act, 1993 are not in motion, the creditors can approach the Court for realization of securities. **Sharath Rukmangada and Ors. v. Cauvery Papers Limited and Ors., MANU/KA/0855/2016.**

Sick Industrial Companies (Special Provisions) Act, 1985:

- **Reference before BIFR non-est** – The Bombay High Court ordered the winding up of the Respondent company on the grounds that it is unable to pay its outstanding dues and also that reference before BIFR in this case does not exist in the eyes of law by virtue of 2nd proviso to Section 15(1) of SICA and protection u/s 22 of SICA cannot be invoked. Here, the petitioner made a reference to the BIFR long after respondents initiated proceedings u/s 13 of SARFAESI Act. The BIFR cannot pass any orders under SICA once the debt of a sick company is assigned to securitization or reconstruction company and the BIFR is wholly barred exercising its powers. **ICICI Bank Limited v. S Kumars Nationwide Ltd., MANU/MH/1091/2016.**

SEBI Laws
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1. Subject: Annual System Audit of Stock Brokers / Trading Members of National Commodity Derivatives Exchanges.

**Circular No. - SEBI/HO/CDMRD/DEICE/CIR/P/2016/70,
Dated: August 11, 2016**

The provisions of this circular shall be applicable from financial year 2016-17 onwards. For the financial year 2015-16, the Brokers / Trading Members who have commenced their annual system audit, may follow existing annual system audit framework prescribed by exchanges, if any. However, stock brokers/ trading members who are yet to commence annual system audit should carry out their system audit as per the prescribed framework as mentioned in this circular. The Exchanges are advised to:-

- Make necessary amendments to relevant bye-laws/rules for the implementation of this circular.
- Communicate SEBI, the status of implementation of the provisions of this circular.

2. Sub: Revised Formats for Financial Results and Implementation of Ind AS by listed entities which have listed their debt securities and/or non-cumulative redeemable preference shares.

**Circular No.- CIR/IMD/DF1/69/2016,
Dated: August 10, 2016**

Formats for disclosure of financial results:

1.1. This has reference to the disclosure of half yearly and annual financial results in terms of Regulation 52 (1) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('Listing Regulations').

1.2. The existing formats prescribed in SEBI Circular dated November 27, 2015, for disclosure of half yearly and annual financial results, shall continue till the period ending on or before December 31, 2016.

1.3. For the period ending after December 31, 2016, the disclosure of half yearly and annual financial results, i.e. the Balance Sheet and the Statement

of Profit and Loss, shall be as per the formats for Balance Sheet and Statement of Profit and Loss (excluding notes and detailed sub-classification) as prescribed in Schedule III to the Companies Act, 2013. However, Banking Companies and Insurance Companies shall follow the formats as prescribed under their respective Acts/Regulations as specified by their Regulators.

1.4. Until Companies (Indian Accounting Standards) Rules, 2015 ('Ind AS Rules') become applicable for a listed entity, the listed entity shall adopt Companies (Accounting Standards) Rules, 2006 ('AS Rules') as prescribed by the Ministry of Corporate Affairs ('MCA').

Formats for publication of financial results:

2.1. The financial results to be published in the newspapers, in terms of Regulation 52 (8) of the Listing Regulations, shall be in the format as prescribed in Annexure I.

Implementation of Ind AS:

2.2. Listed entities, adopting the Indian Accounting Standards (hereinafter referred as '**Ind AS**') in terms of Ind AS Rules, while publishing the half yearly/annual financial results under Regulation 52 (1) of the Listing Regulations, shall ensure that the comparative financial results, filed along with the said half yearly/annual financial results, are also Ind AS compliant.

2.3. In order to facilitate smooth transition, the following relaxations are being given for the first half year of the adoption of Ind AS:

(i) The timeline for submitting the said financial results would be extended by one month (i.e. the said half yearly financial results can be submitted within 75 days from the end of the half year).

(ii) With regard to the comparative financial results for the corresponding half year in the preceding year, the limited review or audit of such comparative half yearly results is not mandatory.

(iii) With regard to the comparative financial results for the preceding full year, the submission of such comparative full year results is not mandatory. However, if the listed entity opts to submit such comparative full year results, then limited review or audit of such comparative full year results is not mandatory

2.4. In the aforementioned cases wherein the comparative half yearly results and/or comparative full year results are not subjected to limited review or audit, the listed entity shall disclose with due prominence that the said comparative results have not been subjected to limited review or audit. The listed entity shall further disclose that the management has exercised

necessary due diligence to ensure that the said comparative results provide a true and fair view of its affairs.

3. Subject: Foreign Investment in Rupee denominated bonds issued overseas by Indian Corporates

**SEBI/HO/IMD/FPIC/CIR/P/2016/67,
Dated: August 4, 2016**

1. RBI in its Fourth Bi-monthly Policy Statement for the year 2015-16, dated September 29, 2015 had permitted Indian corporates to issue Rupee denominated bonds overseas within the ceiling of FPI investments in Corporate debt. RBI, vide A.P. (DIR Series) Circular No.17 dated September 29, 2015 had put in place the framework for issuance of Rupee denominated bonds overseas.
2. Accordingly, the INR 244,323 cr Corporate debt limit for FPIs shall be redefined as the Combined Corporate debt limit for all foreign investments in Rupee denominated bonds issued both onshore and overseas by Indian corporates.
3. Foreign investments in Overseas Rupee denominated bonds shall now be reckoned against the Combined Corporate debt limit of INR 244,323 cr. However, these investments shall not be treated as FPI investments and hence shall not be under the purview of the SEBI (Foreign Portfolio Investor), Regulations, 2014.
4. In partial modification to Para 5 of the SEBI circular CIR/IMD/FIIC/6/2013 dated April 01, 2013, it has been decided that the entire Combined Corporate debt limit of INR 244,323 cr shall be available on tap for investment by foreign investors. All other extant terms and conditions with respect to FPI investments in Corporate debt shall continue to apply.
5. The criteria for foreign investments in Overseas Rupee denominated bonds shall be as defined by RBI from time to time.
6. The depositories (NSDL and CDSL) shall put in place the necessary systems for receiving data on foreign investments in Overseas Rupee denominated bonds from RBI on a periodic basis.

5. **SEBI Regulations: Triggering of Open Offer Obligations-** Regulation 13 of SEBI (SAST) Regulations, 2011- When a person subscribes to fully convertible debentures under an agreement which has no fixed date for conversion of the said debentures into equity shares, then that person is said to have acquired the shares of that company only on a date on which the option for conversion of debentures into equity shares is exercised and open offer obligation under the Regulations, if any, gets triggered on the date on which such option is exercised. **Victor Fernandes v. SEBI, [2016] 133 CLA 1(SAT).**

Civil Laws

By Advocate Praveen K Mittal, +91-9810826436

- It was held that interest for the period prior to suit is payable under contractual interest and after the institution of the suit it is governed by Section 34 of CPC, and the Court has got discretion to order payment of interest at such rate as the Court deems reasonable. Despite transaction being commercial no document has been filed in respect to percentage of interest payable is concerned accordingly 6% per annum interest was directed to be paid on the principle sum adjudged from the date of filing of the suit, to the date of decree, that is, pendente lite and interest from the date of decree till the date of realization. **JAY AR Enterprises and Ors. V. Script Traders MANU/TN/1493/2016**
- The Plaint was returned by Hon'ble Delhi High Court upon application under Order VII Rule 10 CPC to be filed before Hon'ble Bombay High Court where the earlier suit in respect of voluntary license agreement is pending. In appeal it was held that the suit before Hon'ble High Court of Bombay is in respect of adjustments under the voluntary license agreements, whereas the present suit deals with the compulsory licenses which are independent statutory licenses granted under Section 31(1)(b) of the Copyright Act, 1957 and do not contain any exclusive jurisdiction clause. **Music Broadcast Limited v Axis Bank and Ors. MANU/DE/1776/2016**
- The Writ Appeal was filed against the order in Writ Petition wherein the prayer sought, was to direct the Assistant Commissioner of Income Tax, New Delhi not to take any coercive action against the petitioner

which is under the Provisions of BIFR as per the provisions of SICA, but the same was rejected for lack of territorial Jurisdiction. It was held that the since the proceedings initiated under Section 133A of the Income Tax are at Delhi and any proceedings in respect thereto will be in Delhi therefore, even considering the Proceedings before BIFR the case will be made only within the territorial jurisdiction of New Delhi.
Tecpro Systems Limited v. The Union of India
MANU/TN/1403/2016

Arbitration Laws

By Advocate Praveen K Mittal, +91-9810826436

agreement between the borrower and the Bank, appointment of arbitrator is not barred even if a proceeding under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, is pending before the Debt Recovery Tribunal. It was further held that in an application under Section 11 of Arbitration and Conciliation Act, 1996, a Court is required to find out if there is existence of a valid arbitration clause. **Amrit Jal Ventures Private Limited v. SREI Infrastructure Finance Limited, MANU/WB/0647/2016.**

- Petitioner during the course of arbitration proceedings sought various adjournments on account of personal difficulty of the witnesses to be presented for evidence in the proceedings. The Arbitrator without any opposition by respondents for re-schedulement imposed heavy cost upon the petitioner and made payment of cost as condition thereby debarring the Petitioners from participating in the proceedings. In view of the principles laid in Ashapura Minechem Ltd. (supra) the ex-parte award was set aside being in gross violation of principles of natural justice. **Auto Craft Engineers v. Akshar Automobiles Agencies Private Limited MANU/MH/1313/2016**

Prevention of Money Laundering Act

By Advocate Pradeep K Mittal, +91-9811044365

- Based on FIR, an ECIR was registered under the Prevention of Money Laundering Act, (PMLA) against the petitioner and his four minor

children. The name of the Petitioner was not initially in the FIR and an amount of 74,47,700/- was recovered from some other person. One of the wives of the petitioner who purchased properties in the name of the minor sons and said to have confessed about payment made to the wife of the deceased person for not disclosing name, was not put in the report for alteration of FIR. The petitioner replied to the notice issued under Section 8(1) through his counsel refuting charges, stating that defendants are minor. It was held that minors are required to join in the present petition with their next friend i.e. petitioner and further directed that in case of any adverse order against the petitioner the remedy to file an appeal under Section 26 of PMLA along with provision to file appeal under Section 42 of PMLA upon any question of law will remain. **R. Ravi v. The Deputy Director Union of India and Ors. MANU/TN/1278/2016**

- The question raised was whether the receipt arising to the applicant, from the transfer of its right, title and interest in and to the trademarks, Foster's Brand Intellectual Property and grant of exclusive perpetual licence of Foster Brewing Intellectual Property is taxable in India, having regard to the provisions of the Income Tax Act, 1961 and the Double Taxation Avoidance Agreement between India and Australia? It was held that the income accruing to the petitioner from the transfer of its right, title or interest in and to the trademarks in Foster's brand intellectual property is not taxable in India under the Income Tax Act, 1961. **CUB PTY Limited v. UOI and Ors. MANU/DE/1745/2016**

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