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ADVOCATES AND SOLICITORS
MONTHLY LAW REPORT FOR AUGUST, 2017
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ADVISER

Mr. PRADEEP K. MITTAL
B.Com., LL.B., FCS, **Advocate**
Past Central Council Member
The Institute of Company Secretaries of India
E-mail: pkmittal171@gmail.com
Ph: +91 9811044365

INCOME TAX

Mr. MANOJ KUMAR MITTAL
CHARTERED ACCOUNTANT
Ph: 28756284, 41557022
9810764620
Email: manojmittal2005@yahoo.com

CIVIL LAWS

Mr. PRAVEEN K. MITTAL
ADVOCATE
E-mail: pkmittal171@gmail.com
9810826436

HONORARY ADVISER

Dr. SANJEEV KUMAR
M.Com. LL.B., Ph.D, PGDPIRL, AICWA, FCS
FORMERLY EXECUTIVE DIRECTOR: BAJAJ HINDUSTHAN
LIMITED

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

Notification & Circular No.	Date of Issue	Subject
<p>1. Notification No. : S02561(E) MANU/DCAF/0070/2017</p>	<p>10th August, 2017</p>	<p>Subject: Exemption of Regional Rural Banks from the application of provisions of sections 5 and 6 of the Competition Act, 2002 - In exercise of the powers conferred by clause (a) of section 54 of the Competition Act, 2002, the Central Government, in public interest, hereby exempts the Regional Rural Banks in respect of which the Central Government has issued a notification under sub-section (1) of section 23A of the Regional Rural Banks Act, 1976, from the application of provisions of sections 5 and 6 of the Competition Act, 2002 for a period of five years from the date of publication of this notification in the Official Gazette.</p>
<p>2. Notification No. : L-3(4)/Reg-L.P./2017- 2018/CCI MANU/DCAF/0071/2017</p>	<p>22nd August, 2017</p>	<p>Subject: Competition Commission of India (Lesser Penalty) Amendment Regulations, 2017 - In exercise of the powers conferred by section 64, read with section 46 and clause (b) of section 27 of the Competition Act, 2002 (12 of 2003), the Competition Commission of India hereby makes the following regulations to amend the Competition Commission of India (Lesser Penalty) Regulations, 2009, namely:- 1. Short title and commencement.-</p>

		<p>(1) These regulations may be called the Competition Commission of India (Lesser Penalty) Amendment Regulations, 2017.</p> <p>(2) They shall come into force on the date of their publication in the Official Gazette.</p> <p>2. Amendments have been made to the following regulations-</p> <p>(i) Regulation 2, sub-regulation 1 a) clause b b) clause g</p> <p>(ii) Regulation 2, sub-regulation 2</p> <p>(iii) Regulation 3, sub-regulation 1</p> <p>(iv) Regulation 4</p> <p>(v) Regulation 5- a) sub-regulation 1 b) sub-regulation 4</p> <p>(vi) Regulation 6</p>
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Companies Act, 2013 Case Laws

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

- ✚ A person aggrieved by action of the Registrar in striking off name of a company in operation can successfully challenge the decision of the Registrar on Writ Petition, even when he is not a person recognized u/s 560(6) of the Companies Act, 1956. A person who is not named u/s 560 cannot be held as remediless in respect of action taken by ROC for striking off name of a company. **Rishima SA Investments LLC vs. ROC, West Bengal and Others. [2017] 139 CLA 89 (Cal.)**

- ✚ It is undisputed position of law that a single act of Oppression, if it has a continuous effect, the petition under section 397/398 of Companies Act, 1956 would be maintainable. Tenability of contention that the petition is barred by limitation is of no consequence. **Bhavesh Narumalani vs. Therm Flow Engineers (P.) Ltd. and Others [2017] 138 CLA 323 (NCLT)**

- ✚ Investigation ordered into the affairs of the company by the Central Government is justified where the order is made on the basis of material on record with proper application of mind, in the public interest and more so where the material justified that the allegations levelled constituted serious violations of various statutory provisions. Writ Petition challenging the order is liable to be dismissed. **Sunair Hotels Ltd. vs. Union of India and Anr. [2017] 139 CLA 52 (Del.)**
- ✚ Though not a beneficiary of order and decree passed by the Company Law Board, the respondent-shareholder, being a party to Company Petition in a case of Oppression and Mismanagement, in which order passed by the Board was affirmed by High Court, can file an application u/s 424(3) of Companies Act, 2013 which deals with Enforcement of Execution order affirmed by High Court. **K. Muthusamy vs. N Sankaranarayanan [2017] 139 CLA 139 (NCLAT)**
- ✚ Permission cannot be granted to the petitioners to withdraw the Company Petition with leave to file fresh petition on the ground that some developments have taken place soon after filing of Company Petition. However, defect in the affidavit can be ratified. **P Obula Reddy vs. Rayen Steels (P.) Ltd. [2017] 139 CLA 124 (NCLT)**
- ✚ NCLAT decided not to interfere with the order of the NCLT to restore the appellants as director of the family company as he has no other source of income, but he would have no power as director since his various wrongful activities created hinderance and disturbed the affairs of the company. **Sanjay Parlikar and Others vs. Ajit Scanning & Diagnostic Centre (P.) Ltd. [2017] 139 CLA 162 (NCLAT)**
- ✚ The Tribunal has jurisdiction to compound the offence of the nature provided for, both before and after the institution of any prosecution. However, the Tribunal has no power to compound offences which is punishable with imprisonment only or with imprisonment and fine both. **Viavi Solutions India (P.) Ltd. vs. Registrar of Companies. [2017] 139 CLA 242 (NCLAT)**

Notifications and Circulars issued by Insolvency and Bankruptcy Board of India

Notification & Circular No.	Date of Issue	Subject
<p>1. Department/Board : PIB MANU/PIBU/1062/2017</p>	<p>16th August, 2017</p>	<p>Subject: Dr. (Ms.) Mamta Suri takes charge as Executive Director, Insolvency and Bankruptcy Board of India - Dr. (Ms.) Mamta Suri took charge as Executive Director, Insolvency and Bankruptcy Board of India (IBBI) in New Delhi on this day. Before joining IBBI, Dr. Suri was serving as Chief General Manager, Insurance Regulatory Development Authority of India. Dr. Suri has obtained her Ph.D. in Finance from University of Delhi and M. Sc.in Insurance Risk and Management from City University, London. Dr. Suri is a Chartered Financial Analyst (CFA) from the Institute of Chartered Financial Analysts of India, and she has completed her graduation in law. She has also received Honorary membership for High Scholastic Achievement from USA.</p>
<p>2. Notification No. : IBBI/2017- 2018/GN/REG-013 MANU/NMIC/0266/2017</p>	<p>16th August, 2017</p>	<p>Subject: Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2017 - In exercise of the powers conferred by clause (t) of sub-section (1) of section 196 read with section 240 of the Insolvency and Bankruptcy Code,</p>

2016, the Insolvency and Bankruptcy Board of India hereby makes the following regulations to amend the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, namely:-

1. These regulations may be called the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2017.

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

3. In the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as the principal regulations), after regulation 9, the following regulation shall be inserted, namely:-

"9A. Claims by other creditors.

(1) A person claiming to be a creditor, other than those covered under regulations 7, 8, or 9, shall submit proof of its claim to the interim resolution professional or resolution professional in person, by post or by electronic means in Form F of the Schedule.

(2) The existence of the claim of the creditor referred to in sub-section (1) may be proved on the basis of -

(a) the records available in an information utility, if any, or

		<p>(b) other relevant documents sufficient to establish the claim, including any or all of the following:-</p> <p>(i) documentary evidence demanding satisfaction of the claim;</p> <p>(ii) bank statements of the creditor showing non-satisfaction of claim;</p> <p>(iii) an order of court or tribunal that has adjudicated upon non-satisfaction of claim, if any."</p> <p>4. In the principal regulations, in the schedule, in Form A, for paragraph starting with the words "The financial creditors" and ending with the words "electronic means", the following paragraph shall be substituted, namely:-</p> <p>"The financial creditors shall submit their proof of claims by electronic means only. All other creditors may submit the proof of claims in person, by post or by electronic means."</p> <p>5. In the principal regulations, in the Schedule, after Form E, the following new Form F shall be inserted.</p>
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Judgments on Insolvency and Bankruptcy Code, 2016
By Advocate P.K. Mittal, +91-9811044365

- ✚ Two parallel proceedings, one before the DRT and another before the NCLT, cannot run simultaneously since section 14 prescribes that when 'moratorium' is set in motion on admission of petition for initiating Insolvency Resolution Process, the other proceedings shall be abated. **Indus Finance Ltd. vs. Quantum Ltd. [2017] 139 CLA 236 (NCLT)**
- ✚ Insolvency proceedings under the Code cannot be taken as something different from the winding up proceedings, and, therefore a petition instituted through a duly constituted attorney u/s 7 & 9 of the Code in respect of the financial and

operational creditors respectively is accepted to be right. **Macquarie Bank Ltd. vs. Uttam Galva Mettalics Ltd. [2017] 139 CLA 216 (NCLT)**

- ✚ Where the Adjudicating Authority has refused to entertain application u/s 9 of the Code due to existence of dispute about the claim of debt, no ground is made out for interference with such orders and so does not call for an appeal. **Philips India Ltd. vs. Goodwill Hospital & Research Centre Ltd. [2017] 139 CLA 208 (NCLAT)**
- ✚ Where the petitioners do not come with clean hands before the Tribunal in bringing out the necessary facts and there is clear case of abuse of the process of law, the Tribunal would be constrained to dismiss the petition initiated by Corporate Debtor itself for Insolvency Resolution Process. **In Re : Unigreen Global (P.) Ltd. [2017] 139 CLA 101 (NCLT)**
- ✚ Where the respondent has disputed the existence of Operational Debt on the ground that the Arbitration proceedings have not come to an end and claimed that no 'Default' within the meaning of section 8(1) read with section 2(12) is deemed to have occurred, admission of application for passing an order for initiating Corporate Insolvency Process is not warranted. **Annapurna Infrastructure (P.) Ltd. and Others vs. Soril Infra Resources Ltd. [2017] 139 CLA 150 (NCLT)**
- ✚ Where the Corporate Debtor itself is initiating the process of Insolvency, it is incumbent on the Corporate Debtor to disclose all the facts including facts in relation to the debts owed by it to its creditors as well as of assets of the Corporate Debtor. **In Re : Unigreen Global (P.) Ltd. [2017] 139 CLA 101 (NCLT)**
- ✚ Where no notice has been given u/s 8 of the Code, no cause of action would arise to file petition u/s 9 by the Operational Creditor. **Seema Gupta vs. Supreme Infrastructure India Ltd. and Others. [2017] 139 CLA 144 (NCLT)**
- ✚ Compliance of various clauses of Section 9(3) is mandatory. Where there is non-compliance of the mandatory requirement of Section 9(3)(c), the issue is liable to be held against the petitioner accordingly. **Macquarie Bank Ltd. vs. Uttam Galva Mettalics Ltd. [2017] 139 CLA 216 (NCLT)**

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

CBDT order under section 119 dated 31.07.2017 Extension Of Due Date For Filing ROI & Linking Of PAN With Aadhaar

The CBDT has issued an order dated 31st July 2017 on the issue of extension of the due date for filing the return of income till 05.08.2017 and a press release on the linking of PAN with Aadhaar.

CBDT Circular Of Clarifications (FAQs) On Computation of S. 115JB Book Profit For Ind AS

The CBDT has issued Circular No. 24/2017 dated 25th July 2017 in which it has provided clarifications on computation of book profit for the purposes of levy of Minimum Alternate Tax (MAT) under section 115JB of the Income-tax Act, 1961 for Indian Accounting Standards (Ind AS) compliant companies

CBDT Circular Reg TDS Deduction On GST Component On Services

The CBDT has issued Circular No. 23 of 2017 dated 19th July 2017 in which it has clarified that wherever in terms of the agreement or contract between the payer and the payee, the component of 'GST on services' comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source under Chapter XVII-B of the Act on the amount paid or payable without including such 'GST on services'

CBDT Modifies Definition Of "Tax Effect" In Low Tax Effect Circular No. 21/2015

The CBDT has issued a letter dated 14th July 2017 in which it has noted that in certain cases appellate authorities are dismissing appeals without going into the merits of the case by relying on the definition of 'tax effect' as defined in Circular No. 21/2015, which prescribes the monetary limit for filing appeals before various appellate authorities. In certain situations where income is computed under the provisions of section 115JB or section 115JC for the purposes of determination of 'tax effect', and the additions made under provisions other than sections 115JB or section 115JC do not impact book profit, the appellate authorities are not considering the said additions for the purpose of 'tax effect' as defined in para 4 Circular No. 21/2015. The CBDT has examined the matter and directed the insertion of para 4.1 after the para 4 of the Circular No. 21/2015

GST On Legal Services – Clarification By Finance Ministry

The Finance Ministry has issued important clarification by way of a press release dated 15th July 2017 regarding the controversy whether legal services are subject to GST or not.

CBDT Guidelines For Selection Of Cases For Scrutiny During FY 2017-18

The CBDT has issued Instruction No. 5/2017 dated 7th July 2017 by which it has laid down the procedure and criteria for compulsory manual selection of returns/cases requiring scrutiny during the financial-year 2017-2018. It is also stated that cases are also being selected under CASS-2017 (Computer Aided Scrutiny Selection) on the basis of broad based selection filters and in a non-discretionary manner in two categories of Limited Scrutiny & Complete Scrutiny.

CBDT Notifications Reg Exemptions From Prohibition Of Cash Receipts U/s 269ST + Amendments To S. 44AB/ Form 3CD Audit Report

The CBDT has issued Notification No. 57 /2017 dated 3rd July 2017 by which it has specified several transactions which are exempt from the provisions of section 269ST which prohibits cash receipt of Rs. 2 lakhs

The CBDT has issued Notification No. 58/2017 dated 3rd July 2017 by which amendments to the tax Audit report Form required to be issued in Form 3CD have been carried out so as to incorporate details of loans, deposits and advances which are covered by sections 269SS and 269T. The amendments are effective from 19th July 20

CBDT Notification Reg Aadhaar And PAN Intimation U/s 139AA Of The I. T. Act, 1961

The CBDT has issued Notification No. 7 of 2017 dated 29th June 2017 in which it has specified the procedure for intimating the AADHAAR number to the Income-tax Department by Permanent Account Number (PAN) holder and quoting of the same in PAN applications in compliance of section 139AA of the Income-tax Act, 1961

CBDT amends form 3CEFA vide notification no. 62/2017 dated 18.07.2017

The CBDT has amended form 3CEFA vide notification no. 62/2017 dated 18.07.2017.

CBDT substitutes sub clause b of sub rule 1 of rule 11UA vide notification no 61 dated 12.07.2017

The CBDT vide notification no 61 dated 12.07.2017 has substituted sub clause b of sub rule 1 of rule 11UA regarding valuation of unquoted equity shares.

CBDT amends form 3CD entries no. 31 vide notification no. 58/2017 vide notification dated 03.07.2017

The CBDT has amended form 3CD entry no 31

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

Case Laws

Domestic Case Laws

[2017] 84 taxmann.com 141 (Delhi - Trib.), Mohinder Kumar Jain

Sec. 54F relief allowable even when multiple flats are sold to purchase one big flat:
DELHI ITAT

84 taxmann.com 90 (Delhi), Hargovind Pandey

Sec. 264 revision couldn't be dismissed just because it was filed belatedly without examining reason of delay. Where Commissioner is of view that a petition is time barred, then in terms of proviso to section 264(3), he should examine whether there was any justifiable reason for such delay.

84 taxmann.com 74 (Bangalore - Trib.), New Delhi Television Ltd.

Where business asset including all fittings and fixtures was let out but after discontinuing business activity of textile mill, rental income could not be treated as income from house property and same would be assessed as income from other sources.

84 taxmann.com 136 (Delhi), New Delhi Television Ltd.

Where assessee having created a complex structure of its subsidiaries abroad, received certain amount through one of its subsidiary which entered into a sham transaction of issued of step UP Coupon Bonds, Assessing Officer was justified in forming an opinion that prima facie amount so received represented assessee's own unaccounted money which escaped assessment and, thus, validity of reassessment proceedings initiated by him deserved to be upheld.

84 taxmann.com 114 (SC), Citizen Co-operative Society Ltd.

Where assessee society was engaged in activity of finance business and was also engaged in activity of granting loans to general public as well, it could not be termed as co-operative society meant only for its members and providing credit facilities to its members, hence not entitled to deduction under section 80P

83 taxmann.com 368 (Delhi), Oracle India (P.) Ltd.

Where audited accounts were already available with Assessing Officer and formed part of assessment record, merely suggesting that there was failure on part of assessee to compute and declare true taxable income and stating that income had escaped assessment for failure on part of assessee did not satisfy reopening assessment in case of assessee after more than four years from end of relevant assessment year.

International Tax Laws

84 taxmann.com 3 (Delhi), Mitsui & Co. Ltd.

Where revenue had been unable to show that LO of the assessee was used for purpose of business or trading activity, Tribunal was correct in holding that assessee did not have a PE in India and was therefore exempt under provisions of DTAA between India and Japan

83 taxmann.com 282 (Delhi - Trib.), NDTV

Where dividend was received by 100% subsidiary of NDTV (Dutch based company) on account of subscription of 68.60% of equity share in NDTV Network PLC (another Dutch Company) and the latter did not declare any dividend to its other investor who hold 31.40% of equity shares, the AO had rightly invoked section 69A by treated NDTV India as the beneficiary owner of the money received by its subsidiary in Netherlands. Thus, NDTV India had entered into sham transactions through creating a complex structure of cobweb of subsidiaries

84 taxmann.com 44 (Delhi - Trib.), Shanghai Electric Group Co. Ltd.

Where assessee, a China based company, was engaged in business of supply of Boiler, Turbine and Generator (BTG) equipments to various companies for setting up of power plants in India, in view of fact that drawing, design and manufacturing of equipments was done outside India but marketing and related activities and supervision of erection and commissioning of equipment was carried out in India through assessee's supervisory PE, a part of profit earned from transaction in question attributable to Indian operations performed by PE was to be brought to tax in India.

Transfer Pricing

84 taxmann.com 42 (Delhi - Trib.), Gates India (P.) Ltd.

TNMM is the most appropriate method where assessee imports raw material from its AE and exports finished goods to AE as the international transaction in respect of import of raw material has a direct bearing to the export of finished goods to AE. Since these transactions are closely linked and interdependent, for the purpose of determining ALP it is appropriate to take the composite transaction and apply TNMM as MAM. When the transactions are multiple and inter-related and if a particular transaction out of the composite transactions cannot be tested under CUP then it is not proper to apply separate methods for determining ALP for each of the transaction especially when international transactions are closely interlinked and interdependent having direct bearing on the price of each other

84 taxmann.com 41 (Delhi - Trib.)

Where assessee rendered software development services to its AE and functions performed by assessee included design of software and its development, a company engaged in development of software products and undertaking training activity of software professionals on online projects and, a company whose financial results were influenced by mergers and acquisitions taking place during relevant year, could not be accepted as comparables while determining ALP.

Rayban Sun Optics India Ltd, 84 taxmann.com 24 (Delhi)

Where assessee had undertaken international transactions of Import and export of raw materials and components and import of semi-finished goods, finished goods and advertising material, said transaction should be benchmarked by applying TNMM instead of CUP method or RPM.

83 taxmann.com 371 (Delhi - Trib.), Evalueserve SEZ (Gurgaon) (P.) Ltd.

A company providing technical services like software testing, verification and validation of software was incomparable to assessee rendering research activities.

Please give us your FEEDBACK, so that this Bulletin may be made of real use to you. Please write to us with your views and contributions at pkmittal171@gmail.com

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THIS REPORT IS CIRCULATED
FOR PKMG LAW CHAMBERS,
171 CHITRA VIHAR, DELHI-110092,
PHONES: (011) 22540549
E-MAIL : pkmittal171@gmail.com
Web-Site: www.pkmgcorporatelaws.com