

# **MONTHLY LAW REPORT FOR FEBRUARY, 2018**

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**MONTHLY LAW REPORT FOR FEBRUARY, 2018**  
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## Circulars and Notifications Issued by Ministry Of Corporate Affairs (MCA)

<p><b>1. Notification No. : S0802(E) MANU/DCAF/0016/2018</b></p>	<p><b>26<sup>th</sup> February, 2018</b></p>	<p><b>Subject: Amendment in notification number G.S.R. 463(E) dated the 5th June, 2015</b> - In exercise of the powers conferred by clauses (a) and (b) of sub-section (1) and subsection (2) of section 462 of the Companies Act, 2013, the Central Government, in the interest of public, hereby amends the notification of the Government of India in the Ministry of Corporate Affairs number G.S.R. 463(E) dated the 5th June, 2015 published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (i), dated the 5th June 2015, namely:-</p> <p>2. In the said notification, in the Table, for serial number 8 and entries relating thereto, the following serial number and entries shall be respectively substituted, namely:-</p> <table border="1" data-bbox="854 1083 1432 1465"> <thead> <tr> <th>(1)</th> <th>(2)</th> <th>(3)</th> </tr> </thead> <tbody> <tr> <td>"8.</td> <td>Chapter IX, section 129.</td> <td>Shall not apply to the companies engaged in defence production to the extent of application of relevant Accounting Standard on segment reporting".</td> </tr> </tbody> </table>	(1)	(2)	(3)	"8.	Chapter IX, section 129.	Shall not apply to the companies engaged in defence production to the extent of application of relevant Accounting Standard on segment reporting".
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"8.	Chapter IX, section 129.	Shall not apply to the companies engaged in defence production to the extent of application of relevant Accounting Standard on segment reporting".						
<p><b>2. Notification No. : S0768(E) MANU/DCAF/0015/2018</b></p>	<p><b>22nd February, 2018</b></p>	<p><b>Subject: Companies (Removal of Difficulties) Order, 2018</b> - Whereas, sub-section (2) of Section 152 of the Companies Act, 2013 provides that every director (including an independent director) shall be appointed by the company in general meeting;</p> <p>And whereas, sub-section (10) of Section 149 of the said Act provides that subject to the provisions of section 152, an</p>						

	<p>independent director shall hold office for a term up to five consecutive years on the Board of a company, but shall be eligible for re-appointment on passing of a special resolution by the company and disclosure of such appointment in the Board's report;</p> <p>And whereas, sub-section (1) of Section 169 of the said Act provides that a company may, by ordinary resolution, remove a director, not being a director appointed by the Tribunal under section 242, before the expiry of the period of his office after giving him a reasonable opportunity of being heard;</p> <p>And whereas, the following difficulties have arisen in giving effect to the above provisions of the said Act regarding appointment and removal of independent directors from the boards of companies, namely :-</p> <p>(i) various stakeholders have suggested difficulties regarding proper monitoring and implementation of corporate governance requirements in companies and in order to strengthen corporate governance process, such stakeholders have suggested for reviewing section 169 of the said Act, which, inter-alia, deals with the removal of independent directors;</p> <p>(ii) in view of the fact that presently an independent director is re-appointed for second term under sub-section (10) of section 149 of the said Act, only by way of a special resolution, such independent director can be removed by an ordinary resolution and not by a special resolution;</p> <p>And whereas, in order to remove above said difficulty, and to ensure better corporate governance in companies, and balancing of powers of the board of the company, it is felt that there is a need for</p>
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		<p>an amendment in section 169 of the Companies Act, 2013 to provide for removal of such re-appointed independent director by way of a special resolution; Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 470 of the Companies Act, 2013, the Central Government hereby makes the following Order to remove the aforesaid difficulty, namely:-</p> <p>1.Short title and commencement.-</p> <p>(1) This Order may be called the Companies (Removal of Difficulties) Order, 2018.</p> <p>(2)It shall come into force from the date of its publication in the Official Gazette.</p> <p>2.In the Companies Act, 2013, in section 169, in sub-section (1), -</p> <p>(i)before the proviso, the following proviso shall be inserted, namely :-</p> <p>"Provided that an independent director re-appointed for second term under sub-section (10) of section 149 shall be removed by the company only by passing a special resolution and after giving him a reasonable opportunity of being heard:";</p> <p>(ii)in the existing proviso, for the words "Provided that", the words "Provided further that" shall be substituted.</p>
<p><b>3. Notification From File No. : 01/35/2013-CL-V MANU/DCAF/0013/2018</b></p>	<p><b>16<sup>th</sup> February, 2018</b></p>	<p><b>Subject: Companies (Authorised to Register) Amendment Rules, 2018 -</b></p> <p>In exercise of the powers conferred by sub-sections (1) and (2) of section 469 read with section 366 of the Companies Act, 2013, the Central Government hereby makes the following rules further to amend the Companies (Authorised to Register) Rules, 2014, namely:-</p> <p>1. (1) These rules may be called the Companies (Authorised to Register) Amendment Rules, 2018.</p> <p>(2) They shall come into force on the date of</p>

	<p>their publication in the Official Gazette.  2. In the Companies (Authorised to Register) Rules, 2014, for Form No.URC-1, the following Form No. URC-1 shall be substituted, namely:-  Form No.URC-1</p>
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**Companies Act, 2013 Case Laws**  
**By Advocate P.K. Mittal, +91-9811044365**

- ✚ The petition of oppression-mismanagement filed u/s 241 read with section 246 of the Companies Act, 2013 was disposed off with the contention that AGM was held without 21 clear days’ notice. It was further noted that the new Statutory Auditor had completed audit of Company’s accounts within one day for the entire year on 07.12.2017 which were approved by Board of Directors and it was decided to place the said accounts before the Board on AGM which is practically not possible. Thus appoints an Independent Auditor to conduct re-audit of Company’s accounts. **[LSI-93-NCLT-2018(AHM)]**
  
- ✚ The Hon’ble high court of Delhi held that it was not open to the single judge to injunct at the interlocutory stage the notice for holding Extra ordinary general meeting for removal of plaintiff from directorship, thus the appeal is to be allowed and impugned order shall be set aside. **Jai Kumar Arya V. Chhaya Devi [MANU/DE/34862017]**
  
- ✚ The Hon’ble High Court of Andhra Pradesh and Telangana finds out there is lacuna in the procedure laid down under rule 14 of the companies (Appointment and qualification of directors) rules, 2014 which doesn’t provide that what is required to be done by the authorities when a defaulting company is allowed to rectify the default of filling the returns, it has been held that the MCA shall be directed to restore the DIN number of the petitioner company is concerned. **Dr.Reddy’s Research Foundation v. MCA. (2018)142 CLA 351(AP&T)**
  
- ✚ It has been held that a petitioner, who by order of CLB got her name restored in the register of members, may request the company to send her all deprived right shares, and the proceeding under section 397 & 398 of companies act, 1956 will still remains a continues cause of action, and the petitioner was also

held entitled to question non issue of such right shares. **Mallina Bharathi Rao Vs. Gowthami Solvent Oils Ltd. and others. (2018)142 CLA 242(NCLT)**

- ✚ It has been held by Hon'ble NCLAT that, where the NCLT didn't give any Findings on the issues relating to oppression committed against the appellant and directly dealt with the matter of removal of appellant from directorship only, the matter is liable to be remanded back to the NCLT to deal with issues on merit. **Proddaturi Malathi Vs. SRP Logistics (P) Ltd. (2018)142 CLA 233 (NCLAT)**
- ✚ Where the CLB fell in error to observe that the petitioner had paid the amount as a subscriber to the MOA and held that the petitioner did not fulfill the requirements for filing petition, the same order is liable to be set aside and the proceedings shall stand revived. **Vipulkumar Dahylal Bhede vs. Cosmopharma (P) Ltd. and Others (2018)142 CLA 204(GUJ)**
- ✚ It was held that, where an immovable property first owned by the director was transferred to the company as temporary arrangements, then later returning him the same by way of transfer in a bonafide manner, cannot be regarded as oppression/mismanagement under section 397 & 398 of Companies act,1956. **R Prasanth Vs. UBC Engineers Pvt Ltd. (2018)142 CLA 212(NCLT)**

## **Insolvency and Bankruptcy Code, 2016 Judgments By Advocate P.K. Mittal, +91-9811044365**

- ✚ **NCLAT held that Financial Creditor is not entitled to invoke rights against Personal Guarantor post Moratorium declaration** - NCLAT dismissed appeal seeking invocation of guarantee against Personal Guarantor and held that once Corporate Insolvency Resolution Process is initiated against a Corporate Debtor under the Insolvency and Bankruptcy Code, 2016 and moratorium is declared, a Financial Creditor (Appellant) cannot invoke guarantee against the Personal Guarantor of the Corporate Debtor. The Respondent No. 1's contention that in view of Sec. 14(1)(b) and 31(1) of the Code, a Financial Creditor cannot proceed against the Personal Guarantor during moratorium was taken into consideration and peruses Sec. 5(22), which defines 'Personal Guarantor', along with Part III of the Code (which relates to 'Insolvency Resolution and Bankruptcy for Individuals and Partnership Firms' including a 'Personal Guarantor') and holds that "the Moratorium will not only be applicable to the property of the Corporate Debtor but also on the Personal Guarantor as well". **[LSI-83-NCLAT-2018(NDEL)]**

- ✚ **No financial debt can be considered under IBC in absence of unconditional undertaking to repay in Promissory Note** - Mumbai NCLT dismissed petition filed by Bravo Builders Pvt. Ltd. u/s 7 of the Insolvency and Bankruptcy Code, 2016 for initiation of Corporate Insolvency Resolution Process against Cottstown Fashions Pvt. Ltd., as there were equity and not debt funding which thereby disqualifies the requirements u/s 7 of the Code. It further held that “Under the Code, it is essential to prove that the transaction in between the petitioner and the company is a loan transaction falling under one or the other head given in sub-section 8 of section 5 of the Code. When ambiguity appears on record in relation to the character of the transaction, the Bench shall not construe such a transaction as a financial debt”. **[LSI-70-NCLT-2018(MUM)]**
  
- ✚ The contention that approach of the Asset Reconstruction company amounts to forum shopping is not tenable as the Insolvency and Bankruptcy Code enables filing of an application notwithstanding the pendency of any proceeding under SARFAESI Act, 2002. The Code enables financial creditor to make an application if Adjudicating Authority is satisfied that default has occurred, and the application is complete, and there is no disciplinary proceedings pending against the proposed resolution professional. **Anandram Developers (P.) Ltd. v. NCLT, Chennai Bench (2018) 142 CLA 485 (Mad.)**
  
- ✚ Where pending Winding up petition is transferred by the High Court to the Tribunal but operational creditor does not submit information as required by Rule 5 of the Transfer of pending Proceedings Rules, the petition cannot be treated as an application under section 9. **Transparent Technologies (P.) Ltd. v. Multi Trade (2018) 142 CLA 518 (NCLAT)**
  
- ✚ Where respondent - company failed to show that amount of loan given to corporate debtor was disbursed against consideration for time value of money, and was borrowed by corporate debtor against payment of interest, the respondent-company did not come within meaning of 'financial creditor' and the impugned order passed by Adjudicating Authority was to be set aside. **Vishwa Nath Singh vs. Visa Drugs & Pharmaceuticals (P.) Ltd. (2018) 142 CLA 521 (NCLAT)**
  
- ✚ Where the corporate debtor has admitted the outstanding towards salary to be paid to the employee who clearly comes within the definition of 'operational creditor' and his salary comes to be admitted on that score alone

for triggering corporate insolvency resolution process against the corporate debtor. **Nitin Gupta v. Applied Electro-Magnetics (P.) Ltd. (2018) 142 CLA 527 (NCLT)**

- ✚ It is held that Company Court has no jurisdiction in relation to proceedings under the Insolvency and Bankruptcy Code which overrides the provision of Companies Act, 1956. Hence no injunction can be granted by the High Court against a Corporate Debtor from institution of proceedings in the NCLT. **Jotun India Pvt. Ltd. vs. PSL Ltd. MANU/MH/0005/2018**
- ✚ Pending proceedings of winding up which are transferred from the High Court to the Tribunal require all information to be submitted for admission of petition within 60 days under the IBC, failing of which the petition shall stand abated. **Sabari Inn Pvt. Ltd. vs. Rameesh Associates Pvt. Ltd. MANU/NL/0176/2017**

### Highlights of Finance Bill, 2018 on Corporate Taxation By CA Manoj Kumar Mittal, +91-9810764620

Particulars	Tax
Domestic Companies having turnover or gross receipts in the previous year 2016-17 does not exceed Rs. 250 Crores	25%
Domestic Companies having turnover or gross receipts in the previous year 2016-17 exceeding Rs. 250 Crores	30%
Other than domestic Company	40%
Domestic company having income exceeding Rs. 1 cr but upto 10 cr	25% Or 30% plus 7% surcharge
Domestic company having income exceeding Rs. 10 cr	25% Or 30 % plus 12% surcharge
Other than Domestic company having income exceeding Rs. 1 cr but upto 10 cr	40% plus 2%
Domestic company having income exceeding Rs. 1 cr but upto 10 cr	40% plus 5%
<b>Note: Education cess at 3% of Income Tax &amp; Surcharge has been abolished and in its place a new cess called Health and Education Cess has been introduced @ 4%.</b>	



### **FIRM TAXATION :**

- ▶ There is no change into it. It is at 30% and plus surchge @ 7% if income exceeds by 1 crore plus-
- ▶ Education cess and Secondary & Higher Education cess at 3% of Income Tax & Surcharge has been abolished and in its place a new cess called Health and Education Cess has been introduced @ 4%.

### **115BBE-Tax on income referred to in section 68 or section 69 or section 69A or section 69B or section 69C or section 69D Clause - 34 A.Y.2017-18 -**

<b>Existing</b>	<b>Proposed</b>
<i>[(1) Where the total income of an assessee,— (a) includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D and reflected in the return of income furnished under section 139; or (b) determined by the Assessing Officer includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D, if such income is not covered under clause a),</i>	<i>[(1) Where the total income of an assessee,— (a) includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D and reflected in the return of income furnished under section 139; or (b) determined by the Assessing Officer includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D, if such income is not covered under clause a),</i>

**115BBE-Tax on income referred to in section 68 or section 69 or section 69A or section 69B or section 69C or section 69D -**

<b>Existing</b>	<b>Proposed</b>
(2) Notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance <sup>44</sup> [ <i>or set off of any loss</i> ] shall be allowed to the assessee under any provision of this Act in computing his income referred to in clause (a) of sub-section (1).	(2) Notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance <sup>44</sup> [ <i>or set off of any loss</i> ] shall be allowed to the assessee under any provision of this Act in computing his income referred to in clause (a) and clause (b) of sub-section (1).

**115-JF-Interpretation in this ChapterXIIB-Special Provision to companies A.Y.2019-20 -**

<b>EXISTING</b>	<b>PROPOSED</b>
b)alternate minimum tax" means the amount of tax computed on adjusted total income at a rate of eighteen and one-half per cent	b)"alternate minimum tax" means the amount of tax computed on adjusted total income,-- (i) in case of an assessee being a unit referred to in sub-section (4) of section 115JC, at a rate of nine per cent.; (ii) in any other case, at a rate of eighteen and one-half per cent.;

**115Q-When company is deemed to be in default Clause -39 A.Y.2019-20 -**

<b>Existing</b>	<b>Proposed</b>
If any principal officer of a domestic company and the company does not pay tax on distributed profits in accordance with the provisions of section 115-O, then, he or it shall be deemed to be an assessee in	If any principal officer of a domestic company and the company does not pay tax on distributed profits in accordance with the provisions of section 115-O, then, he or it shall be deemed to be an

default in respect of the amount of tax payable by him or it and all the provisions of this Act for the collection and recovery of income-tax shall apply.

assessee in default in respect of the amount of tax payable by him or it and all the provisions of this Act for the collection and recovery of income-tax shall apply.

**Sec 115BA - Tax on income of certain domestic company**  
**Clause-33 - A.Y. 2017-18 (start up company)**

**Chapter -XII - Determination of tax in certain cases -**

<b>EXISTING</b>	<b>PROPOSED</b>
<p>"115BA. <i>Tax on income of certain domestic companies.</i>—(1) Notwithstanding anything contained in this Act but subject to the provisions of section 111A and section 112, the income-tax payable in respect of the total income of a person, being a domestic company, for any previous year relevant to the assessment year beginning on or after the 1st day of April, 2017, shall, at the option of such person, be computed at the rate of twenty-five per cent, if the conditions contained in sub-section (2) are satisfied.</p>	<p>"115BA. <i>Tax on income of certain domestic companies.</i>—(1) Notwithstanding anything contained in this Act but subject to the provisions of section 111A and section 112, other provision of this chapter the income-tax payable in respect of the total income of a person, being a domestic company, for any previous year relevant to the assessment year beginning on or after the 1st day of April, 2017, shall, at the option of such person, be computed at the rate of twenty-five per cent, if the conditions contained in sub-section (2) are satisfied.</p>

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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](mailto:pkmittal171@gmail.com)

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