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

Notification & Circular No.	Date of Issue	Subject
<p style="text-align: center;">1. Notification No. SO2264(E) MANU/DCAF/0087/2016</p>	<p style="text-align: center;">30-06-2016</p>	<p>Companies (Removal of Difficulties) Third Order, 2016: In Section 139(2) of the Companies Act, 2013 for the third proviso, the following shall be substituted "Provided also that every company, existing on or before the commencement of this Act which is required to comply with the provisions of this sub-section, shall comply with requirements of this sub-section within a period which shall not be later than the date of the first annual general meeting of the company held, within the period specified under sub-section (1) of section 96, after three years from the date of commencement of this Act."</p>
<p style="text-align: center;">2. Notification No. - GSR646(E) MANU/DCAF/0088/2016</p>	<p style="text-align: center;">30-06-2016</p>	<p>Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2016</p> <p>The following amendments came into effect with this Amendment Rule:</p> <p>In Rule 3 of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 a return of appointment of MD, WTD, Manager, CEO, CS, CFO is required to be filed by the</p>

		<p>company within sixty days of appointment with ROC in Form MR-1. Now, CEO, CFO and CS are excluded from the above Rule.</p> <p>In Rule 5 (1) of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 the following clauses (v), (vi), (vii), (ix), (x), (xi) shall be omitted.</p> <p>In Rule 5 (2), for the name of every employee, the name of top ten employees shall be substituted.</p> <p>In clause (i) of Rule 5 (2) for words sixty lakhs, "one crore and two lakh rupees" shall be substituted.</p> <p>In sub-clause (ii) of Rule 5 (2) for the words "five lakh rupees per month", the words "eight lakh and fifty thousand rupees per month" shall be substituted.</p>
<p>3. Notification No. – G.S.R. 180(E) MANU/DCAF/0089/2016</p>	<p>29-06-2016</p>	<p>Companies (Acceptance of Deposits) Amendment Rules, 2016</p> <p>Amount raised by issue of unsecured non-convertible debentures is not a deposit.</p>

Companies Act 1956 and 2013 Case Laws

By Advocate PK Mittal, +91-9811044365

- **Vicarious Liability of Directors-** Where the whole-time and executive director were in charge of day to day affairs of the company had intentionally issued the dishonoured cheque u/s 138 and 141 of Negotiable Instruments Act, 1881 the complaint against such directors cannot be quashed. For quashing a complaint, it must be shown that no offence is made out against the director. **Standard Chartered Bank v. State of Maharashtra, [2016] 132 CLA 281 (SC).**
- **Reduction of Share Capital** in accordance with Section 100- 103 of the Companies Act, 1956- The petition was admitted by the Court and the notice of the petition was advertised in English daily and vernacular language editions and the same is confirmed by an affidavit. To the same advertisement, no objections were raised opposing the sanction of reduction of share capital. The court confirmed the scheme of reduction as it did not prejudicially affect anyone. The petitioner was further directed to file the notice of reduction with ROC within 14 days of the registration of the order. In **Re: I 4 Knowledge Processing Private Limited, MANU/GJ/0931/2016.**
- **Rectification of Register of Members-** Limitation for filing an appeal before the CLB- It's a settled law that if no limitation period is prescribed, Article 137 of Limitation Act shall be applicable and therefore, three years period from the date of cause of action would be available for an aggrieved party to approach the CLB for relief u/s 111/111A of the Companies Act, 1956. **LIC v. Tata Steel Ltd., [2016] 132 CLA 294 (CLB).**
- **Maintainability of Petition before Tribunal-** Where the provisions of Section 56 cannot be complied, a petition u/s 58 of the Companies Act, 2013 cannot be maintained. Section 56 (1) of the Companies Act, 2013 read with Rule 11 of Companies (Share Capital and Debentures) Rules, 2014 provides that instrument of share transfer along with original share

transfer form should have been delivered to the company within sixty days from the date of execution. Otherwise it would result in violation of the provisions of the Companies Act. The SC in Chengalavarya Naidu's case has held that a litigant is bound to produce all the documents executed by him which are relevant to the litigation. If the Petitioner withholds it, he would be guilty of playing fraud on the Court. **K. Ravinder Reddy v. Alliance Business School and Ors., MANU/CL/0006/2016.**

- **Amalgamations and Arrangements-** In addition to the compliance with the SEBI norms (where the transferee is a listed company) and FEMA and RBI guidelines (where equity share capital of transferee is held by FIIs and NRIs)- For the purpose of adjudication of stamp duty, the petitioner companies are required to lodge a copy of order, schedule of immovable assets of transferor company and scheme duly authenticated by the Registrar with the Superintendent of Stamps within sixty days from the date of order. A copy of order along with a scheme should be filed with ROC in Form No. INC-28. In **Re: Artistique Ceramics Private Limited, MANU/GJ/0903/2016.**
- Where the Company Law Board had dismissed petition on the grounds, first, that the documents are forged and could not be examined by it and second, petition filed to CLB was barred by law of limitation- The civil court shall be at liberty to take an independent view of the matter relating to the genuineness of the forged documents on the basis of material and evidence produced before it. Here, the CLB shall not bar the Civil Court to examine the controversy in accordance with law. **M Krishna Reddy v. ACE Forge (P.) Ltd., [2016] 132 CLA 455 (Kar.)**
- **Oppression and Mismanagement-** The AGM of the company held in violation of Articles as the quorum could not be considered complete. The company has also failed to make disclosures of Related Party transactions. It alleges various acts of Oppression and Mismanagement. Any disputes arising in a petition u/s 397-398 read with Section 402 of the Companies Act, 1956 cannot be referred to Arbitrator. Therefore, jurisdiction of CLB (now Tribunal) to adjudicate these issues cannot be taken by a private forum appointed by the parties styled as 'Arbitrators'. **Avigo PE Investments Ltd. v. Tecpro Engineers Ltd. and Ors., MANU/CL/0009/2016.**

- **Refusal to register transfer of shares-** Where any entry or omission has been made previously and the same continues to subsist in the register of members in respect of shares, and there is no sufficient cause for such subsistence, Company or Board of Directors have no power to correct such entry without seeking an order from the Company Law Board (now Tribunal) u/s 111(1) of the 1956 Act. **Afzal Khan v. Mehboob Ayub Khan, [2016] 132 CLA 419 (Bom.)**

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

- **CBDT 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 in which it provided clarifications to 14 queries. The CBDT has now issued **Circular No. 24 of 2016 dated 27th June 2016** in which it has clarified further queries received from the public about various provisions of the Scheme.

- **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

- **CBDT Amends Rule On Applicability Of General Anti-Avoidance Rule (GAAR)**

The CBDT has issued Notification dated 22nd June 2016 to clarify the law on the retrospective applicability of the anti-avoidance GAAR rule. The Notification has amended Rule 10U(1)(d) to provide that GAAR will not apply to income earned/received by any person from transfer of investments made before 1st April 2017. Earlier, this date was 30th August 2010. Rule 10U(2) also has been amended to provide that GAAR will apply to any arrangement, irrespective of the date it has been entered into, if tax benefit is obtained on or after 1st April 2017. Earlier, this date was 1st April 2015.

- **CBDT Circular Further Clarifying Various Issues Relating To TCS Obligations U/s 206C As Amended By The Finance Act 2016**

Further to Circular No 22/2016 dated 8th June 2016, the CBDT has issued **Circular No. 23 dated 24th June 2016** in which it has provided clarification to important questions such as whether tax collection at source under section 206C(1D) at the rate of 1% will apply in cases where the sale consideration received is partly in cash and partly in cheque and the cash receipt is less than two lakh rupees. The CBDT has also clarified the issue whether tax collection at source under section 206C (1D) will apply only to cash component or in respect of whole of sales consideration.

- **CBDT Issues Clarification Regarding Simplification Of Procedure For Form Nos. 15G & 15H**

The CBDT has issued Notification No 9/2016 dated 09th June 2016 by which it has provided clarification on the following issues (a) Due date for quarterly uploading of 15G/H declarations by payers on e-filing portal and (b) The manner for dealing with Form 15G/15H received by payer during the period from 01.10.2015 to 31.03.2016.

- **CBDT Notification Amending Rule 8D(2) Relating To Disallowance U/s 14A Of The Income-Tax Act, 1961**

Rule 8D has been amended by the Income-tax (14th Amendment) Rules, 2016 notified vide Notification No 43/2016 dated 2nd June 2016. Clause (ii) of Rule 8D(2) dealing with indirect expenditure by way of interest has been omitted. It is also stated that the disallowance u/s 14A r.w Rule 8D cannot exceed the expenditure claimed by the assessee. The limit of 0.5% under clause (iii) has been increased to 1%. However, the 1% will apply to the annual average of the monthly averages of the opening and closing balances of the value of investments, income from which does not or shall not form part of total income. The question whether the disallowance can exceed the exempt income and whether the 1% is to be applied only to investments which have generated exempt income during the previous year has not been clarified and hence litigation on those points will continue

- **CBDT Circular Clarifying Various Issues Relating To TCS Obligations U/s 206C As Amended By The Finance Act 2016**

In order to reduce the cash transactions in sale of goods and services, the Finance Act 2016 has expanded the scope of section 206C (ID) to provide that the seller shall collect tax at the rate of one per cent from the purchaser on sale in cash of any goods (other than bullion and jewellery) or providing of any services (other than payment on which tax is deducted at source under Chapter XVII-B) exceeding two lakh rupees. Further, with a view to bring high value transactions within the tax net, it has been provided in sub-section (1F) of section 206C of the Act that the seller who receives consideration for sale of a motor vehicle exceeding ten lakh rupees, shall collect one per cent of the sale consideration as tax from the buyer. To clarify the queries about the scope of the provisions and the procedure to be followed, the CBDT has issued Circular No 22/2016 dated 8th June 2016 in a Q& A format

- **CBDT Circular On Claim Of Deduction For Bad Debts U/s 36 (1) (vii) read with S. 36 (2) Of The Income-Tax Act, 1961**

The CBDT has issued Circular No. 12/2016 dated 30th May 2016 in which it has stated that in accordance with the law laid down by the Supreme Court in TRF Ltd. vs. CIT 323 ITR 397, claim for any debt or part thereof in any previous year shall be admissible under section 36(1)(vii) of the Act, if it is written off as irrecoverable in the books of accounts of the assessee for that previous year and it fulfills the conditions stipulated in sub section (2) of sub-section 36(2) of the Act. The CBDT has directed

that no appeals may henceforth be filed on this ground and appeals already filed, if any, on this issue before various Courts/Tribunals may be withdrawn/not pressed upon.

- **Online filling of TDS and TCS Return**

The CBDT vide notification no. 11/2016 dated 22.06.2016 has provided the option of online filling of TDS and TCS Return.

- **CBDT notifies equalisation levy rule**

CBDT vide notification no. 38/2016 dated 27.05.2016 notified equalization levy rule 2016.

- **CBDT notifies cost inflation index**

CBDT vide notification no. 42/2016 dated 2.06.2016 notifies cost inflation index for FY 2016-17 as 1125.

- **No TDS on payment to securitization trust**

CBDT vide notification no. 46/2016 dated 17.06.2016 has notified that there will not be any deduction of tax on payment as specified under 10(23DA).

- **NO TDS on payment to Scheduled Indian Bank**

CBDT vide notification no 47/2016 dated 17.06.2016 has notified that there will not be any deduction of TDS on payment to scheduled bank or company as authorized by RBI other than foreign bank in respect of following payment:-

- bank guarantee commission;
- cash management service charges;
- depository charges on maintenance of DEMAT accounts;
- charges for warehousing services for commodities;
- underwriting service charges;
- clearing charges (MICR charges) including interchange fee or any other similar charges by whatever name called charged at the time of settlement or for clearing activities under the Payment and Settlement Systems Act, 2007;
- credit card or debit card commission for transaction between merchant establishment and acquirer bank.

- **CBDT provides for relaxation from deduction of higher rate under section 206AA**

The CBDT vide notification no. 53/2016 dated 24.06.2016 has inserted rule 37BC to provide for non deduction of higher TDS in case of payment to nonresident not having PAN if the deductee provides the specified documents.

- **CBDT provides for Foreign Tax Credit Rules**

CBDT vide notification no. 57/2016 dated 27.06.2016 has provided for foreign tax credit rules by inserting rule 128.

- **CBDT provides for rules relating to determination of FMV**

CBDT vide notification no. 55/2016 dated 28.06.2016 has rule 11 UB, 11UC and 114DB relating to determination of FMV of the assets of the company.

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

- **Domestic Case Laws**
- **[2016] 70 taxmann.com 340 (Chennai - Trib.)**
IT: Where ownership of assessee over property was subject to life interest retained by her mother in said property, it could not be said that assessee owned said property fully and it could not be a reason to deny exemption under section 54F claimed by assessee on sale of her another property
- **[2016] 70 taxmann.com 336 (Chandigarh - Trib.)**
Where Assessing Officer rejected books of account of liquor business due to non-maintenance of sales records, since practice of not issuing bills was prevalent all over country in liquor trade, action of Assessing Officer was not justified
- **[2016] 70 taxmann.com 321 (Mumbai - Trib.)**

Where assessee was a registered charitable hospital and its pharmacy shop was specially used for its internal use, assessee was not hit by sub-section (4A)

- **[2016] 70 taxmann.com 320 (Kolkata - Trib.)**

Even where amount remained unclaimed by sundry creditors for a considerable period of time and liability was carried forward for many years without remission or cessation till date, said amount could not be added to income

- **[2016] 70 taxmann.com 294 (SC)**

SLP granted against High Court's ruling that assessee would be entitled to take credit of income tax paid in a foreign country even in relation to income which was exempt under section 10A

SLP granted against High Court's ruling that payments made by assessee for import of software could not be disallowed under section 40(a)(i) as same did not constitute royalty

- **[2016] 70 taxmann.com 335 (Chandigarh - Trib.)**

Where assessee received cash for more than Rs. 20,000 for investment on behalf of his agriculturalist friend and source of money was explained, penalty was not leviable.

International Taxation Case Laws

- **[2016] 69 taxmann.com 454 (Pune - Trib.)**

Where assessee, a non-resident company, had entered into an agreement with its principal in UK and received know-how of designing and running plants which in turn, it had sub-licensed to Indian company against royalty at 5 per cent of net sales, royalty income having been received by assessee on its own right as beneficial owner of same, such royalty income was to be subjected to tax at concessional tax rate at 10 per cent

Where interest income was earned by assessee-Singaporean company from Indian company being its beneficial owner and it had been remitted to Singapore though not in instant year, it was taxable at concessional rate of taxes

- **[2016] 68 taxmann.com 143 (Delhi)**

Payment received for carrying out 2D/3D seismic survey in connection with exploration of oil, would not be in nature of 'fees for technical services' in terms of Explanation 2 to section 9(1)(vii)

Whether during period from 01.04.2004 to 01.04.2011, tax on any income from fees for technical services falling within section 44DA(1), which was excluded from ambit of section 115A(1)(b) but was not expressly excluded from scope of section 44BB(1), would be computed under section 44BB(1)

- **[2016] 68 taxmann.com 142 (Kolkata - Trib.)**

Where assessee, a UK based company, sent its personnel to India in connection with agreement for modernisation of shipyard of an Indian company but assessee did not carry on any other business through its fixed place in India, it was to be concluded that no PE of assessee existed in India

Where assessee, a foreign company, filed its return of income admitting that it had PE in India, it could subsequently raise a plea in assessment proceedings that it had no PE in India and there was no requirement of filing a revised return for raising aforesaid plea

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

- **[2016] 70 taxmann.com 388 (Delhi - Trib.)**

Transfer pricing provisions can be invoked even in case of an assessee which is a 100 per cent export oriented unit under software technology park scheme and enjoys a tax holiday under section 10A.

- **[2016] 65 taxmann.com 245 (AAR - New Delhi)**

When acquisition of shares started from year 1999 which were sold after almost 20 years later, and, there have been no transaction for sale of those shares these shares were capital arties as defined in section 2(14) of Act.

Provisions of section 115JB would not be applicable to a foreign company if it is a resident of a country having DTAA with India and such foreign company does not have a PE within definition of terminus in relevant DTAA.

Even where income from proposed transaction was not chargeable to tax in India in accordance, there will be no question of applicability of sections 92 to 92F.

Where proposed transaction of shares would not be taxed in India, there is no need to file return under section 139 by applicant.

- **[2014] 45 taxmann.com 102 (Delhi - Trib.)**

TP adjustments made to assesses ALP were not justified as assessee had earned profit in India whereas its AE had continuously sustained losses FAR

Corporate Laws
By Advocate PK Mittal, +91-9811044365

SARFAESI LAW:

- **Enforcement of Security Interest-** Where the borrower fails to discharge his liability in full within the period specified in the notice, a secured creditor can proceed against the borrower for the recovery of only those secured debts that is mentioned in the notice and is also free to proceed first against the guarantors or sell the pledged assets. Section 17 of the Act further provides that if any party is aggrieved by the measures taken by the secured creditor, he can approach the DRT. In case appeal is not disposed of by DRT, an appeal is filed to DRAT. For preferring an appeal to DRAT, pre-deposit is required to be deposited as pre-condition. It was held by SC that on the disposal of appeal by DRAT, the pre-deposit amount has to be refunded to the appellant as it is neither a secured asset nor a secured debt. **Axis Bank v. SBS Organics (P.) Ltd. and Another, [2016] 132 CLA 313 (SC).**

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

- **Exclusive jurisdiction of the Tribunal-** The petition is filed to w-up the company on the ground that it is unable to pay debts. Section 433 (e) of the Companies Act, 1956 vests in the Company Court the jurisdiction to w-up a company, if the company fails to compound the debt within the prescribed time allotted by the creditors. Section 17 of the RDB Act provides that the Tribunal (DRT) shall exercise the jurisdiction only in respect of matters of banks and financial institutions for recovery of debts due to them. In the instant petition, the counter claim filed by the Petitioner against the Respondent company for recovery of dues which shall be decided by DRT on its own merits. **SICOM Ltd. v. Entertainment World Developers Pvt. Ltd., MANU/MH/1081/2016.**
- **Right to approach DRT and not Civil Court-** Section 13(4) of the Securitization Act envisages various measures to the creditors to secure borrower's debt and one of that measure is taking possession of secured assets of the borrowers. Any person aggrieved has got a statutory right to appeal to DRT u/s 17 of the SARFAESI Act. Civil Court has no jurisdiction to entertain suit or proceedings in such matters which may be taken cognizance by DRT. **Chief Manager, SBI and Ors., v. Sagar Villa Apartment Owners Association and Ors., MANU/WB/0477/2016.**

Sick Industrial Companies (Special Provisions) Act, 1985:

Landmark Judgment- Overriding effect of SICA- The following observations were made in the instant case:

- Once a reference is registered with the BIFR, it becomes mandatory to call for information/ documents from the Informant, then an enquiry u/s 16(1) of SICA deemed to have commenced.
- Where the proceedings are pending before BIFR and Company Court, no order of w-up can be passed against the company.
- The High Court has no jurisdiction to approve the scheme of arrangement presented by sick company when revival scheme of the company is pending before AAIFR.
- After suffering an order of w-up, one could approach the BIFR and get the w-up proceedings stayed.
- For invoking protection u/s 22, an inquiry has to be pending u/s 16, a scheme u/s 17 has to be under implementation and an appeal is pending before AAIFR u/s 25. **Madura Coats Limited v. Modi Rubber Ltd. and Ors., MANU/SC/0696/2016.**

Civil Laws

By Advocate Praveen K Mittal, +91-9810826436

- Suit for Specific performance of agreements of sell is maintainable once there is no issue of Plaintiffs using subject agreements to sell for taking benefit of doctrine of part performance, and plaintiffs are only seeking specific performance of agreement to sell. There is no requirement for registering and stamping agreement to sell as an agreement falling under Section 53A of T.P. Act. The Collector of Stamps legally can have no objection to present course of action. By suits only specific performance is sought of agreement to sell by virtue of proviso to Section 49 of Registration Act. No benefits claimed on documents itself as basis for seeking benefit of doctrine of part performance under Section 53A of T.P. Act. **C.S. Agarwal & Anr. Vs. Nirmal Jain & Ors. & C.S. Agrawal & Anr. 229 (2016) Delhi Law Times 375.**
- If finding of Inquiry Officer was based on no evidence or perverse then judicial interference by Court would be attracted. **Commissioner, Kendriya Vidyalaya Sangathan Vs. Dr. Dharmendra Singh, 228 (2016) Delhi Law Times 562 (DB).**
- Condonation of delay of 53 days in filing appeal. Affidavits filed by Senior Officers to show steps taken to avoid delay and to streamline the Procedures. Court must adopt liberal approach in deciding matters on delay. To meet ends of justice, delay of 53 days in filing leave to appeal condoned. **State (Govt. of NCT of Delhi) Vs. Mukesh & Ors. 228 (2016) Delhi Law Times 389 (DB).**
- Dispute raised inter parties in relation to Unregistered Will/Codicil left by ancestors. Suit for declaration and consequential injunction is not maintainable founded upon a Will/Codicil unless probate/letters of administration in respect of Will have been obtained. Plaintiffs have equal and alternative efficacious remedy of preferring a testamentary case and it is open to plaintiffs to seek interim injunctive relief even in such proceedings. **Om Prakash Yadav & Others Vs. Kanta Yadav & Ors. 228 (2016) Delhi Law Times 591.**
- To prosecute a person for offence punishable under Section 629, neither any consent nor any sanction from the Central Government is required. Since the permission obtained from the Central Government to launch prosecution cannot be equated to a consent or sanction to be obtained statutorily under sub-section (3) of Section 470 of the Code of Criminal

Procedure, the period spent to obtain permission cannot be excluded from the period of limitation. Therefore, the complaint would be barred by limitation and the prosecution initiated on that complaint would be liable to be quashed. **Govind Rajan & Others Vs. M.O. Roy (2015) 125 CLA 74 (Mad.).**

- In the execution petition, the Executing Court has to be satisfied that Judgment Debtor did not have any other property within its jurisdiction at the time of transferring the decree for execution to the jurisdiction of some other court. **Angle Infrastructure Pvt. Ltd. Vs. Ashok Manchanda & Ors. 228 (2016) Delhi Law Times 624(DB).**
- In absence of renewal of lease, status of original lessee, in relation to property in question, is that of an unauthorized occupant as he had continued in occupation of property in question as an 'unauthorized person'. Deposit of conversion charges in respect of same to office of DDA cannot help respondent in claiming any right with respect to property in question. **Delhi Development Authority Vs. Anant Raj Agencies Pvt. Ltd. 229 (2016) Delhi Law Times 197 (SC).**
- Sale of property in question by original lessee in favour of Respondent is not a valid assignment of his right in respect of same and the said Sale deed is not binding on DDA. **Delhi Development Authority Vs. Anant Raj Agencies Pvt. Ltd. 229 (2016) Delhi Law Times 197 (SC).**
- Court is entitled to proceed on basis of case disclosed by Plaintiff in its plaint and documents filed on record by Plaintiff. However, each and every fact pleaded does not ipso facto lead to conclusion that those facts give rise to cause of action within territorial jurisdiction of Court concerned. **Piccadily Agro Industries Ltd. Vs. Ashok Narwal & Anr. 229 (2016) Delhi Law Times 604.**
- Amicable resolution of dispute by parties arisen out of FIR under Section 498A, 406 and 34 IPC without any undue influence, pressure or coercion. Hence, no useful purpose will be served by proceeding with subject FIR and proceedings arising there-from and FIR and proceedings qua same is liable to be set aside and quashed **Kapil Chawla & Ors. Vs. State & Anr. 229 (2016) Delhi Law Times 22A (CN).**
- Party who approaches Court with unclean hands, i.e. party which either conceals relevant and material facts from Court and/or makes false claims and assertions before Court, is not entitled to exercise of discretion by Court in his favour even if such a party, on merits, is deserving of exercise

of such discretion. **Aura Synergy India Ltd & Anr. Vs. New Age False Ceiling Co. Pvt. Ltd. & Anr. 229 (2016) Delhi Law Times 562.**

- Defence of party may not be relevant for purposes of rejection of plaint under Order 7 Rule 11, CPC. **Subhadara Vs. Surender Singh & Ors., Ravinder Singh & Ors. 229 (2016) Delhi Law Times 188.**
- Even where two Courts in two places may have jurisdiction, an exclusive jurisdiction clause in favour of one of the two places ousts jurisdiction of other. **Music Broadcast Pvt. Ltd. Vs. Axis Bank & Ors. 227 (2016) Delhi Law Times 739.**
- The court held that the use of a trademark upon permission under an agreement would not give rise to any right of ownership against the trademark holder. Delay in taking steps to renew the trademark does not mean abandonment of the trademark on the part of trademark holder. Stay under Order 39 Rule 1 and 2 of CPC may be granted only when there is case of some right in the hand of the party by way of use or development or contribution in the trademark. **BCH Electric Limited vs. Eaton Corporation and Ors. MANU/DE/1416/2016**
- The Plaintiff had a current account in connection with its export business and requested the bank through letter to keep the said sum in fixed deposit, while the account was frozen upon instruction by the Customs Department. In view of *Raneegunj Coal Association Ltd. v. Union of India* MANU/SC/0460/1989 it was held that the defendant was not legally bound to place the amount in question in fixed deposits as requested and also that, no interest is payable on the current account or an account in the nature of a current account. **Veritas Exports vs. Bank of Baroda MANU/MH/0970/2016**
- The defendant has to pay a sum of Rs. 33,44,50,344/- to five decree holders. No payment has been made despite several undertakings and long delay. On the other hand the defendant has been successfully running the broadcast of his channel. The view of arrest under Section 51(c) of CPC will be a negative approach and therefore adopting procedure under Section 51(d) of CPC, receiver was appointed in the form of a committee comprising one representative from each of the decree holders and the defendant. The committee shall supervise the work and income and take decisions upon vote and shall remain until the decree is satisfied. **Den**

**Networks Ltd. and Ors. Vs. Mahuaa Media Pvt. Ltd. and Ors.
MANU/TD/0024/2016**

- The District Consumer Forum concluded that it had jurisdiction to decide the case. The opposite party filed Petition under Article 227 of the Constitution of India which was rejected with liberty to approach State Consumer Disputes Redressal Commission, which refused to interfere with the order of the District Forum. Party filed revisional application under Article 227 of the Constitution of India. It was held that since the State Commission only decided the issue of territorial jurisdiction therefore, statutory appeal under Section 19 of Consumer Protection Act is available.
**Mahesh Kumar Agarwal vs. Expandable Enterprises (P) Ltd.
MANU/WB/0480/2016**

Arbitration Laws

By Advocate Praveen K Mittal, +91-9810826436

- Unless an arbitration agreement stipulates that the parties agree to submit all or certain disputes which have arisen or which may arise in respect of defined legal relationship, whether contractual or not, and unless it conveys that there has to be intention expressing the consensual acceptance to refer the parties to an arbitrator who should hold judicial inquiry and decide matter on the basis of evidence and that decision should be binding on parties, the agreement cannot be construed as an arbitration agreement.
Karnataka Power Transmission Corporation Ltd. & Another Vs. Deepak Cables (India) Ltd. (2015) 125 CLA 36 (SC).
- The contractor received payment in 2001 after completion of work and served notice demanding further payment in the year 2005. It was replied that the contractor had given “no further claim” certificate therefore no arbitrable dispute exists. The contractor after requesting appointment of Arbitrator filed application under Section 11 of Arbitration Act, before District Judge Ropar which was taken by Chief Justice of the High Court and was rejected for the reason that the claim does not exist due to delay. In view of the Division Bench Judgment in Indian Oil Corporation Ltd. it

was held that it was for the arbitrator to decide as the payment received was for undisputed portion. **EMM ENN Associates vs. Commander Works Engineer and Ors MANU/SC/0695/2016**

- The finding, by the Arbitrator that there was no termination of the contract, was not open to challenge under Section 34 and Section 37 of the Arbitration Act. The party had the option to quit from the contract in terms of the exit policy, but since it performed the contract upto a certain extended date, therefore, it cannot escape the liability during the period of its performance of contract. **Foodworld vs. Indian Railway Catering & Tourism Corporation Ltd. (IRCTC) MANU/DE/1373/2016.**

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

- Assessee received share application money of Rs. 1 Crore from two companies and also agricultural income of Rs. 391650/-. The ROC data does not establish that such company is in existence in the year in which the credit entries are appearing in the books of the other parties. Both the persons are in the business of providing entries. The assessee did not produce the directors of the investor company as well as whereabouts, their business and how they built such a huge capital. Further the assessee company failed to show sale of agricultural produce. It was held that AO may conduct enquiry and confront the assessee with the evidence gathered by affording proper opportunity of hearing. **The Joint Commissioner of Income Tax v. Prasandi Biotech Park Pvt. Limited MANU/ID/0559/2016**
- In view of CIT v. Nipun Builders and Developers MANU/DE/0037/2013 it was held that the accommodation entries of Rs. 11,00,000/- were the appellants own undisclosed income which reflected in the shape of share application money under guise of untraceable entities. Shares allotted to three entities were bought back by the directors of the appellant company. The action of AO in assessing the amount of Rs. 11,00,000/- and Rs. 22,000/- as unexplained expenditure is justified and upheld, further AO

may apply the rate of commission on the basis of comparable case. **M.K. Cycle Industries Pvt. Ltd. vs. ITO MANU/ID/0561/2016**

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