

PKMG LAW CHAMBERS

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MONTHLY LAW REPORT FOR JULY, 2017
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Circulars and Notifications Issued by Ministry Of Corporate Affairs (MCA)

Notification & Circular No.	Date of Issue	Subject
1. Notification No. : GSR955(E) MANU/DCAF/0069/2017	27th July, 2017	<p>Subject: Companies (Incorporation) Second Amendment Rules, 2017 -</p> <p>In exercise of the powers conferred by sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Incorporation) Rules, 2014, namely: -</p> <ol style="list-style-type: none"> 1. (1) These rules may be called the Companies (Incorporation) Second Amendment Rules, 2017. (2) They shall come into force on the date of their publication in the official gazette. <p>Further the following amendments were made -</p> <ol style="list-style-type: none"> 1. "28. Shifting of registered office within the same State. 2. "30. Shifting of Registered Office from one State or Union Territory to another State.
2. Notification From File No. : 01/01/2014-CL-V MANU/DCAF/0063/2017	13th July, 2017	<p>Subject: Amendment in notification number G.S.R. 583(E), dated the 13th June, 2017 -</p> <p>In the notification of the Government of India, in the Ministry of Corporate Affairs, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide G.S.R. 583(E), dated the 13th June, 2017 at page 4, in paragraph number 5, in the</p>

		Table, in the column (3), in item (ii), for the words "statement or" read "statement and".
<p align="center">3. Notification No. : S01910(E) MANU/DCAF/0054/2017</p>	<p>14th June, 2017</p>	<p>Subject: Enforcement date of Sections 55 to 58 of Insolvency and Bankruptcy Code, 2016 - In exercise of the powers conferred by sub-section (3) of section 1 of the Insolvency and Bankruptcy Code, 2016, the Central Government hereby appoints the 14th day of June, 2017 as the date on which the provisions of section 55 to section 58 (both inclusive) of the said Code shall come into force.</p>
<p align="center">4. Notification From File No. : 01/32/2013-CL-V- Part MANU/DCAF/0064/2017</p>	<p>13th July, 2017</p>	<p>Subject: Companies (Meetings of Board and its Powers) Second Amendment Rules, 2017 - In exercise of the powers conferred under sections 173, 175, 177, 178, 179, 184, 185, 186, 187, 188, 189 and section 191 read with section 469 of the Companies Act, 2013, the Central Government hereby makes the following rules further to amend the Companies (Meetings of Board and its Powers) Rules, 2014, namely:-</p> <p>1. (1) These rules may be called the Companies (Meetings of Board and its Powers) Second Amendment Rules, 2017. (2) They shall come into force on the date of their publication in the Official Gazette.</p> <p>2. In the Companies (Meetings of Board and its Powers) Rules, 2014 (hereinafter referred to as principal rules), in rule 3,-</p>

(i) in sub-rule (3), for clause (e), the following shall be substituted, namely:-

"(e) Any director who intends to participate in the meeting through electronic mode may intimate about such participation at the beginning of the calendar year and such declaration shall be valid for one year:

Provided that such declaration shall not debar him from participation in the meeting in person in which case he shall intimate the company sufficiently in advance of his intention to participate in person."

(ii) in sub-rule (11), in clause (a), after the words "decision taken by majority", the words "and the draft minutes so recorded shall be preserved by the company till the confirmation of the draft minutes in accordance with sub-rule (12)" shall be inserted.

3. In the principal rules, for rule 6, the following rule shall be substituted, namely:-

"6. Committees of the Board.-The Board of directors of every listed company and a company covered under rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014 shall constitute an 'Audit Committee' and a 'Nomination and Remuneration Committee of the Board'."

<p>5. Notification No. : SO2113(E) MANU/DCAF/0067/2017</p>	<p>6th July, 2017</p>	<p>Subject: Amendments to Schedule IV of Companies Act, 2013 -</p> <p>In exercise of the powers conferred by sub-section (1) of section 467 of the Companies Act, 2013, the Central Government hereby makes the following amendments to Schedule IV of the said Act, namely:-</p> <p>2. In the Companies Act, 2013, in Schedule IV, -</p> <p>(i)in paragraph III, in sub-para (12), for the words "acting within his authority", the words "act within their authority" shall be substituted;</p> <p>(ii)in paragraph VI, sub-para (2), for the words " a period of not more than one hundred and eighty days", the words "three months" shall be substituted;</p> <p>(iii)in paragraph VII, in sub-para (1), for the words "in a year", the words "in a financial year" shall be substituted; and</p> <p>(iv)after paragraph VIII, the following note shall be inserted, namely:-</p> <p>"Note: The provisions of sub-paragraph (2) and (7) of paragraph II, paragraph IV, paragraph V, clauses (a) and (b) of sub-paragraph (3) of paragraph VII and paragraph VIII shall not apply in the case of a Government company as defined under clause (45) of section 2 of the Companies Act, 2013, if the requirements in respect of matters specified in</p>
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		<p>these paragraphs are specified by the concerned Ministries or Departments of the Central Government or as the case may be, the State Governments and such requirements are complied with by the Government companies."</p> <p>3. This notification shall come into force on the date of its publication in the Official Gazette.</p>
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Companies Act, 2013 Case Laws By Advocate P.K. Mittal, +91-9811044365

- ✚ Once the main issue of the matter is already decided by the Tribunal and the same reaches finality, the parties are not entitled to raise issues related thereto as frivolous litigation(s) by abusing the process of law. **Vijayawada Share Brokers Ltd. and Others vs. D Ramakishore. [2017] 138 CLA 282 (NCLT)**
- ✚ The ex-parte interim order is liable to be set aside if no notice had been served on the petitioner in respect of the application for interim order, when the main petition is still pending. **Pramod Sharma vs. Dental Implants India (P.) Ltd. and Others. [2017] 138 CLA 275 (NCLT)**
- ✚ Where the petitioners fail to prove their case in the petition for relief, in case of Oppression/Mismanagement and the demerger process is pending for long, the respondents are directed to provide exit opportunity to the petitioners on fair valuation. **Rachit Suresh Gangar and Others vs. Triveni Bialetti Industries (P.) Ltd. and Others [2017] 138 CLA 31 (NCLT)**
- ✚ It is implied from Section 434(1)(c) of the Companies Act, 2013 that, In relation to all proceedings of the transferred cases from the High Court to the NCLT for sanction of scheme of Compromise/Arrangement, the provisions of the 2013 Act have to be applied as against the 1956 Act. **In Re: R S Livemedia (P.) Ltd. [2017] 138 CLA 206 (NCLT)**
- ✚ **Legal heir holding requisite shares entitled to file oppression-mismanagement petition** - NCLT Kolkata Bench partly allowed oppression and mismanagement petition filed by Smt. Durga Ray against Kshirode Chandra Ghosh

and Sons Pvt. Ltd., holding the petition filed by petitioner entitled to 16.36% shares in the company, in the capacity of legal heir and successor-in-interest as maintainable. It further holds that appointment of respondent directors by passing resolution without quorum or calling of meeting as illegal, invalid, not in compliance with statutory provisions of Companies Act, 1956 and hence oppressive and prejudicial to interests of the company and its stakeholders. Accordingly, directs respondents to fulfil statutory compliances of appointment of Directors to Board for public limited companies. **[LSI-1739-NCLT-2017-(KOL)]**

✚ **Unsecured creditor's winding-up petition, not in interests of other stakeholders is liable to be dismissed** – High Court of Madras dismissed winding up petition filed by Kotak Mahindra Bank Ltd., an unsecured creditor, against Orchid Pharma Limited for non-repayment of loans u/s section 433(e), 433(f), 434(1)(a) and 439(1)(b) of Companies Act, 1956. It holds that Respondent was undergoing Corporate Debt Reconstructing mechanism and observes that Petitioner has signed the Inter-Creditor Agreement and also participated in meetings of secured creditors' forum, which clearly mentions that once the Lender Group has approved a reconstructing mechanism by a "Super Majority". It denies petition to order winding-up of Respondent Company after observing that winding up of the Respondent company would not be in the interest of secured and unsecured creditors, workmen and/ or employees, as also public shareholders. **[LSI-1714-HC-2016-(MAD)]**

✚ **Allotment of shares done in undue haste and against Petitioner's interest is liable to be set aside** - NCLT Ahmedabad sets aside appointment of Shami Nemlawala as the Director in Surgi Aid Lifecare Pvt Ltd. and allotment of shares after filing of the petition by Rahuldev Pramodkumar Vyas, as it was done with undue haste and against the interest of the Petitioner. It takes note of Petitioner's allegations w.r.t. Respondent Company's management such as non furnishing of notice for board/ shareholders meeting. Further notes that Petitioner himself stayed away from the affairs of the Company from 2012 and did not intimate the Company about the change in his residence. On the ground of delay and laches on the part of the Petitioner, holds that the Petitioner was not entitled to question resolutions passed between 2012 and 2016. **[LSI-1698-NCLT-2017-(AHM)]**

✚ **NCLT disposes petition, admitting non-disclosure of reasons for not spending requisite CSR expenditure** - NCLT Ahmedabad disposes petition filed by Rubberking Tyres, admitting violation of Sec. 134(3)(o) of Companies Act, 2013 i.e. non-disclosure of reasons for not spending the required amount of CSR activities for the year 2014-15. It takes note that there was no disclosure regarding the amount spent towards CSR expenditure from the Balance Sheet and records of

the Company. Further compounds the company's violation by an amount of Rs. 1 lakh and directs ROC to take appropriate steps as per Companies Act and relevant Rules. [LSI-1699-NCLT-2017-(AHM)]

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

CBDT Circular Explains Whether Trade Advances Constitute 'Deemed Dividends' U/s 2(22)(e) Of The I. T. Act, 1961

The CBDT has issued Circular No. 19/2017 dated 12th June 2017 in which it has considered the important issue whether trade advances, which are in the nature of commercial transactions, would fall within the ambit of the word 'advance' in section 2(22)(e) of the Act and be assessable as "deemed dividends"

CBDT Circular Reg Applicability Of S. 194-I Of The Income-tax Act, 1961 To Remittance Of Passenger Service Fees (PSF) By Airlines To Airport Operators

The CBDT has issued Circular No. 21/2017 dated 12th June 2017 in which it has dealt with the important issue of applicability of the provisions of section 194-I of the I.T. Act, 1961 on remittance of Passenger Service Fees (PSF) by an Airline to an Airport Operator. The CBDT has considered the issue in the light of the judgement of the High Court of Bombay in CIT vs. Jet Airways (India) Ltd. (ITA No.1181 of 2014 dated 04.01.2017 where it was held that even though the normal meaning of the word 'rent' stood expanded, the primary requirement is that the payment must be for the use of land and building and mere incidental /minor /insignificant use of the same while providing other facilities and service would not make it a payment for use of land and buildings so as to attract section 194-I of the Act

CBDT Circular Reg Adjustment Of Seized Assets Against Existing Liability U/s 132B Of The I.T. Act, 1961

The CBDT has issued Circular No.20/2017 dated 12th June 2017 in which it has dealt with the important issue of adjustment of seized assets/requisitioned assets against the amount of any existing liability under section 132B of the Income-tax Act, 1961

CBDT Notification Reg Filing Of TDS Forms 15G-15H U/s 197A Of Income-Tax Act

The CBDT has issued Notification dated 30th May 2017 with regard to the obligation of the recipients/ payees to furnish to the payer a self-declaration in Form No.15G/15H under section 197A of the Income-tax Act, 1961 read with Rule 29C

Extension of date of furnishing tds certificate to employee or payee for march qtr

The CBDT vide notification no. 42/2017 dated 02/06/2017 amended rule 31(3) thereby extending the date of furnishing of tds certificate to employee or payee by 15th June instead of 31st May.

Transaction covered under section 10(38) IIIrd proviso

The CBDT vide notification no. 43/2017 dated 05.06.2017 notified the transaction are covered a under the IIIrd proviso of the section 10(38) and chargeable to Income Tax Act.

Cost Inflanation index for the F.Y. 2017-18

The CBDT by notification 44/2017 dated 05.06.2017 has notified new cost inflation index taking base as 2001-02 and also notified CII for F.Y 2-17-18 as 272.

Notification of new safe harbor rule

THE cbdt notifies new safe harbour rule vide notification dated 47/2017 dated 07.06.2017.

Notification of accepted variation from ALP under section 92 C

The CBDT vide notification dated 50/2017 dated 09.06.2017 has notified that "In exercise of the powers conferred by the third proviso to sub-section (2) of section 92C of the Income-tax Act, 1961 (43 of 1961)(hereinafter referred to as the 'Act'), read with proviso to sub-rule (7) of rule 10CA of the Income-tax Rules, 1962, the Central Government hereby notifies that where the variation between the arm's length price determined under section 92C of the Act and the price at which the international transaction or specified domestic transaction has actually been undertaken does not exceed one per cent. of the latter in respect of wholesale trading and three per cent. of the latter in all other cases, the price at which the international transaction or specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price for assessment year 2017-18 and assessment year 2018-19."

Intimation of Adhar Number to the PDGIT

The CBDT vide notification 56/2017 dated 27.06.2017 has amended rule 114 by inserting sub rule 5 providing for quoting Adhar in income tax return.

Amendment of rule 30 to comply with section 194 IB

The CBDT vide notification dated 48/2017 date 27.06.2017 inserted SUB-rule 2B and 6B providing mechanism for filling challan cum statement in form 26QC and deposit of tax.

Computation of interest income pursuant to secondary adjustment

The CBDT has vide notification dated 15/2017 no 52/2017 has notified rule 10CB for computation of income pursuant to secondary adjustment.

Amendment in form 3CED

The CBDT has vide notification dated 16.06.2017 no 53/2017 has in Apendix II in form 3CED has substituted item no.3.

Income Tax Case Laws

By CA Manoj Kumar Mittal, +91-9810764620

CASE LAWS

Domestic Case Laws

Vireet Investment (P.) Ltd. 82 taxmann.com 415 (Delhi - Trib.) (SB)

Computation of book profit in terms of clause (f) of Explanation 1 to section 115JB(2) is to be made without resorting to computation as contemplated under section 14A read with Rule 8D.

B.A. Mohota Textiles Traders (P.) Ltd, 82 taxmann.com 397 (Bombay)

Where assessee company was under control of members of a family, who were a part of a family settlement, but was a separate legal entity being incorporated as a limited company, transaction of transfer of shares by assessee-company amounted to transfer and would be covered within meaning of section 2(47) so as to be assessable to capital gains tax.

Binoy Viswam, 82 taxmann.com 211 (SC)

Those assesseees who are not Aadhaar card holders and do not comply with the provision of Section 139AA(2) intimating his Aadhar card number to PAN card authorities, their PAN cards cannot be treated as invalid for the time being until Parliament consider as to whether there is a need to tone down the effect of the said proviso by limiting the consequences.

Shri Rangji Realties (P.) Ltd, 82 taxmann.com 456 (Mumbai - Trib.)

Where in course of assessment Assessing Officer restricted allowance of TDS credited to extent of actual amount of rent received, in view of fact that amount of TDS corresponding to unrealised rent was also offered to tax under section 198, assessee's action was in accordance with provisions of section 199 and, thus assessee was eligible for seeking credit of TDS on entire amount.

Mrs. Kinty Suri, 82 taxmann.com 462 (Delhi - Trib.)

Where assessee, non-employee director and shareholder having no substantial interest in company, undertook foreign visits for business purposes of company, related expenditure would not be considered as his/her perquisites.

TRANSFER PRICING CASE LAWS

Inno Estates (P.) Ltd, 82 taxmann.com 477 (Madras)

Since objections filed by assessee against draft assessment order can be considered by DRP only, filing of objections before Assessing Officer within time

itself will not get over period of limitation, if such filing before DRP was after such period.

Where DRP chooses to reject objections filed by assessee either on merits or on ground of delay, it would itself constitute a direction to Assessing Officer to complete assessment in accordance with draft order as contemplated under section 144C(5).

Yokogawa India Ltd. 82 taxmann.com 443 (Bangalore - Trib.)

Where receipts and payments to AE were clubbed and tested under TNMM, in such a case transaction relating to fee paid towards global sale and marketing activity could not be separately tested for determining its ALP.

INTERNATIONAL CASE LAWS

ABB FZ-LLC, 83 taxmann.com 86 (Bengaluru - Trib)

Consideration received by assessee a UAE based group company from ABB Ltd. (its Indian counterpart) pursuant to rendering consultancy and management services under the regional headquarter service agreement between the assessee company and ABB Ltd., constitutes 'royalty' under article 12 of India-UAE DTAA. The service agreement gives opportunity to ABB Ltd. of using the information pertaining to industrial /commercial / scientific experience belonging to assessee (not available in the open market). The assessee has merely provided the access to such specialised knowledge, skill and expertise and has not done anything more, for rendering the services. It is not a case of 'rendering of any services', but mere sharing of information, which squarely falls within the ambit of 'royalty' definition under article 12(3) of DTAA.

Vanenberg Facilities BV, 82 taxmann.com 433 (Andhra Pradesh)

Alienation of shares of Indian company by a Dutch company in favour of Singapore based company would not fall under article 13(1) of DTAA between India and Netherlands and capital gain earned on said transaction would be covered by exemption under residuary clause of article 13(5) and, thus, would not be taxable in India.

Honda Siel Cars India Ltd. 82 taxmann.com 212 (SC)

Where a new business was set up with technical know-how provided by a Japanese company and lump sum royalty was paid therefor, expenditure in form of royalty paid would be in nature of capital expenditure and not revenue expenditure.

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

INSOLVENCY AND BANKRUPTCY CODE, 2016

- ✚ Filing of Certificate from the financial institution maintaining accounts of operational creditor is mandatory. **Smart Timing Steel Ltd. vs. National Steel & Agro Industries Ltd. [2017] 139 CLA 1 (NCLAT)**
- ✚ Although the Code has no specific provision to provide hearing to corporate debtor in a petition u/s 7&9, yet reasonable opportunity has to be provided by adjudicating authority before passing an order in adherence to principles of natural justice. It is mandatory duty of the adjudicating authority to issue notice to the corporate debtor. **Starlog Enterprises Ltd. vs. ICICI Bank Ltd. [2017] 139 CLA 8 (NCLAT)**
- ✚ It is held that the time limit prescribed in the Code for adjudicating/rejecting of petition or initiation of Insolvency Resolution Process is mandatory, however to consider/decide the same, it is desirable to notice different time limits prescribed under the Code. All time limits being procedural are not mandatory. **JK Jute Mills Co. Ltd. vs. Surendra Trading Co. [2017] 138 CLA 258 (NCLAT)**
- ✚ In order to prevent further erosion of capital, safeguard the assets of the applicant company/corporate debtor and balance the interest of all stakeholders, the application for initiation of Corporate Insolvency Resolution process stands admitted even though the applicant company has not given road map as to how it is going to keep afloat as going concern. **In Re: Hind Motors Ltd. [2017] 138 CLA 249 (NCLAT)**
- ✚ Where dispute raised by corporate debtor falls within the ambit of expression 'dispute' as defined under section 5(6) and 'existence of a dispute' mentioned under section 8(2) of Insolvency and Bankruptcy Code, 2016, the order passed by the adjudicating authority admitting the application of the 'operational creditor' to set in motion the Corporate Insolvency Resolution Process is to be set aside. **Meyer Apparel Ltd. and Another vs. Surbhi Body Products (P.) Ltd. [2017] 139 CLA 32 (NCLAT)**
- ✚ Where order is passed by the adjudicating authority without noticing that there was a dispute raised and replied to by corporate debtor, the order of the adjudicating authority cannot be upheld. **MCL Global Steel (P.) Ltd. and Another vs. Essar Projects India Ltd. and Another [2017] 139 CLA 39 (NCLAT)**

Competition Act, 2002

✚ HC: Grants permanent injunction and punitive damages against infringement of 'Hindustan Times' TM/logo - Delhi HC grants ex parte permanent injunction in favour of HT Media Ltd & Anr. ('Plaintiffs') restraining Navneet Chaturvedi & Anr. ('Defendants') from using Plaintiffs' registered trademarks 'HINDUSTAN TIMES', 'HT', HT logo and/or any deceptive variant thereof including the Plaintiffs' domain names in or as part of its Facebook Profile, twitter handle, linkedin profile or as part of its business e-mail Ids and news publications; Notes that in the letters received from Defendant No.1 by the Plaintiffs, the Defendant No.1 not only surrendered his website, www.hindustantimesonline.com of the company wholly in favour of the Plaintiffs but also sought sincere apology for the mistake done by him; Further notes that despite sending the apology letters, the Defendant No. 1 went on infringing the Plaintiffs' mark for ulterior benefits and also failed to appear in the case despite a restraint order; Relies upon a judgment of co-ordinate bench in Jockey International Inc & Anr vs. R. Chandra Mohan to hold that the Defendants reclused themselves from the proceedings and thus they cannot be permitted to enjoy the benefits of evasion or covert priorities; Concludes that the Defendants are liable to pay punitive damages to the Plaintiffs on account of infringing the registered marks, logo, label etc of the Plaintiffs despite the restraint order and hence decrees the suit accordingly: Delhi HC **[LSI-1740-HC-2017-(DEL)]**

✚ **High Court grants permanent injunction for infringing the mark 'EXON' under Section 29(4) of the Trademarks Act, 1999** - Delhi High Court grants ex-parte permanent injunction in favour of Exxon Mobil Corporation & Anr. restraining Anser Pasha from using the mark 'EXON' as a part of trade name EXON City Taxi Tours and Travels in respect of tours and travels services, infringing the Plaintiffs' mark EXON. It observes that the plaintiffs have adopted the said mark 'EXON' in 1967 and have been using it since then in respect of fuels, lubricants, petroleum oils etc. which is very closely associated with the taxi service business of the defendants. It notes that in the instant case, registered trade mark of the plaintiff is infringed under Section 29(4) of the Act, even though the products being dissimilar, as the plaintiff's mark has reputation in India and the defendant by using phonetically and visually similar mark without due cause is taking unfair advantage which is detrimental to the distinctive character or reputation of the plaintiff registered mark. It relies upon Rolex SA vs. Alex Jewellery Pvt. Ltd. and Bloomberg Finance LP vs. Prafull Saklecha to hold that the Defendant is liable for infringement under Section

29(4) of the Act. Accordingly, holds defendant liable for infringement. **[LSI-1741-HC-2017-(DEL)]**

- ✚ **HC: Grants permanent injunction w.r.t. use of the mark 'NIROKHA' infringing 'NAULAKHA'** - Delhi HC grants permanent injunction in favour of Dharam Chand Ladha Mal restraining Subhash Sabun Udyog & Ors. from selling, advertising or marketing their product under the mark 'NIROKHA' or any other mark which is similar to the Plaintiff's registered trade mark 'NAULAKHA' and passing off its products as that of the Plaintiffs. The Court passed an injunction order restraining the Defendants and also appointed a Local Commissioner for search and seizure of the infringing products. It relies upon the report of the Local Commissioner and the documents on record to hold that there is a clear similarity between the trade dress of the Defendants and the Plaintiff's product. It takes note of the plea of Defendants that they are small time traders and they cannot afford to pay the damages as sought for by the Plaintiff. Hence, Decrees the suit and directs the Defendants to pay compensation/damages accordingly. **[LSI-1742-HC-2017-(DEL)]**

SEBI Laws

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

- ✚ **SEBI imposes penalty of Rs. 27 lakhs on Sungold Capital** - SEBI holds Sungold Capital Limited and its executive directors liable for penalty u/s.15HA of SEBI Act, 1992 for violation of Regulation 3(d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating Securities Market) Regulations, 2003. It observes that promoters shareholding wrongly classified under public category, thus giving misleading appearance of high liquidity under public category. It further notes that falsely classifying close relatives of Promoter & CMD in 'public' instead of 'promoter' category was a serious irregularity. It observes that failure to report change in shareholding by over 25000 shares within 2 days results in violation of Regulation 13(4) read with Regulation 13(5) of Prohibition of Insider Trading (PIT) Regulations, 1992. Accordingly imposes penalty totaling Rs. 27 lakhs. **[LSI-1719- SEBI-2017-(MUM)]**
- ✚ **SEBI holds Merlin Agri Projects guilty of money mobilization** - SEBI receives complaint in relation to money mobilization by way of issue of shares by Merlin Agri Projects India Ltd. It observes mismatch in names of allottees as per Form 2 and complaint received by SEBI. It further observes that under section 67(3) of Companies Act, 1956, allotment of shares to more than 50 persons constitutes an offer to public. SEBI notes the non-compliance with

Sections 56, 60 and 73 of Companies Act, 1956 dealing with issue of prospectus and listing of shares. It passes interim directions against the company and its directors, restraining them from accessing securities markets and dealing in securities, and orders refund of moneys collected with interest. **[LSI-1718-SEBI-2017-(MUM)]**

✚ **SEBI penalizes promoters for failure to disclose change in shareholding -** SEBI penalizes Mr. Sandeep Deora & Mrs. Shruti Deora for failure to make requisite disclosure about change in shareholding in Santowin Corporation Ltd. under Regulation 13(4) read with Regulation 13(5) of Prohibition of Insider Trading regulations, 1992. It observes failure to disclose change of shareholding of 3,31,000 shares pursuant to transfer of shares collectively held by the Noticees to Mr. Ashok Gupta & Mr. Ankush Gupta. It further observes that since change in 'control' and shareholding exceeds 25,000 shares, disclosure had to be made to the company and to the stock exchanges. It also relies on SC case SEBI vs. Shriram Mutual Fund and holds that "In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial". Imposes a consolidated penalty of Rs.4 lakhs on the Noticees. **[LSI-1743- SEBI-2017-(MUM)]**

✚ **SEBI holds Verinder Finance liable for violating Sections 56, 60 and 73 of the Companies Act, 1956 -** SEBI directs Verinder Finance Limited and its Directors to refund money collected through the offer and allotment of Compulsorily Convertible Preference Shares, with interest of 15% p.a. It holds that the noticees are engaged in fund mobilising activity from the public, through offer and issuance of the Shares, and thus violating Sections 56, 60 and 73 of Companies Act, 1956 and Regulations 4(2)(d), 5, 6, 7, 25, 26, 36, 37, 46, 47, 57 and 59 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009. **[LSI-1744- SEBI-2017-(MUM)]**

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