

# **PKMG LAW CHAMBERS**

**ADVOCATES AND SOLICITORS**  
**MONTHLY LAW REPORT FOR JUNE, 2017**  
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## **CIVIL LAWS**

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

Notification & Circular No.	Date of Issue	Subject
<b>1. Notification No. : GSR621(E) MANU/DCAF/0057/2017</b>	<b>22<sup>nd</sup> June, 2017</b>	<p><b>Subject: Companies (Audit and Auditors) Second Amendment Rules, 2017 -</b></p> <p>In exercise of the powers conferred by section 139 read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013, the Central Government hereby makes the following rules further to amend the Companies (Audit and Auditors) Rules, 2014, namely:-</p> <p>1. Short title and commencement.- (1) These rules may be called the Companies (Audit and Auditors) 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 (Audit and Auditors) Rules, 2014, in rule 5, in clause (b), for the word "twenty", the word "fifty" shall be substituted.</p>
<b>2. Notification No. : SO1933(E) MANU/DCAF/0056/2017</b>	<b>16<sup>th</sup> June, 2017</b>	<p><b>Subject: Exemption of Vessels Sharing Agreements of Liner Shipping Industry from the provisions of section 3 Competition Act, 2002 -</b></p> <p>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 Vessels Sharing Agreements of Liner Shipping Industry from the provisions of section 3 of the said</p>

		<p>Act, for a period of one year with effect from the 20th June, 2017, in respect of carriers of all nationalities operating ships of any nationality from any Indian port provided such agreements do not include concerted practices involving fixing of prices, limitation of capacity or sales and the allocation of markets or customers. During the said period of one year, the Director General, Shipping, Ministry of Shipping, Government of India shall monitor such agreements and for which, the persons responsible for operations of such ships in India shall file copies of existing Vessels Sharing Agreements or Vessels Sharing Agreements to be entered into with applicability during the said period along with other relevant documents within thirty days of the publication of this notification in the Official Gazette or within ten days of signing of such agreements, whichever is later, with the Director General, Shipping.</p>
<p><b>3. Notification No. : SO1910(E) MANU/DCAF/0054/2017</b></p>	<p><b>14<sup>th</sup> June, 2017</b></p>	<p><b>Subject: Enforcement date of Sections 55 to 58 of Insolvency and Bankruptcy Code, 2016</b> - 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><b>4. Notification No.</b> <b>: S01911(E)</b> <b>MANU/DCAF/0055/2017</b></p>	<p><b>14<sup>th</sup> June,</b> <b>2017</b></p>	<p><b>Subject: Central Government hereby notifies that an application for fast track corporate insolvency resolution process may be made in respect of specified corporate debtors -</b> In exercise of the powers conferred by sub-section (2) of section 55 of the Insolvency and Bankruptcy Code, 2016, the Central Government hereby notifies that an application for fast track corporate insolvency resolution process may be made in respect of the following corporate debtors, namely :- (a) a small company as defined under clause (85) of section 2 of Companies Act, 2013 (18 of 2013); or (b) a Startup (other than the partnership firm) as defined in the notification of the Government of India in the Ministry of Commerce and Industry number G.S.R. 501(E), dated the 23rd May, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), dated the 23rd May, 2017; or (c) an unlisted company with total assets, as reported in the financial statement of the immediately preceding financial year, not exceeding rupees one crore.</p>
<p><b>5. General Circular No. :</b> <b>07/2017</b> <b>MANU/DCAF/0050/2017</b></p>	<p><b>5<sup>th</sup> June,</b> <b>2017</b></p>	<p><b>Subject: Clarification regarding transmission of Securities by Operation of Law - Reg -</b> Clarity has been sought by stakeholders w.r.t. issue of duplicate shares</p>

		<p>under Rule 6 (3)(d) of the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016. It has been stated that since transfer of shares to IEPF under section 124 (6) of the Companies Act, 2013 read with rules referred to above takes place on account of operation of law hence the procedure followed during transmission of shares may be followed in such cases and duplicate shares need not be issued in such cases. The suggestion made by the stakeholders has been examined in the Ministry and it is clarified that the procedure similar to what is followed in case of transmission of shares may be followed by companies while transferring shares to IEPF Authority pursuant to section 124 (6) read with applicable rules.</p> <p>2. This issues with the approval of the Competent Authority</p>
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**Companies Act, 2013 Case Laws**  
**By Advocate P.K. Mittal, +91-9811044365**

- ✚ **NCLT allows composite scheme of arrangement between Aditya Birla entities and Grasim** - NCLT Ahmedabad approves composite scheme of arrangement between Aditya Birla Financial Services Ltd., Aditya Birla Nuvo Ltd. and Grasim Industries Ltd. on compliance with the provisions of Section 230-232 of the Companies Act, 2013. It held that the scheme of arrangement is genuine, bonafide and in the interest of shareholders and creditors, Composite scheme of arrangement includes amalgamation of ABNL with Grasim followed by the

demerger and listing of ABFSL. It further notes that the scheme of merger was approved by more than the requisite majority of equity shareholders and also unanimously by secured and unsecured creditors of Grasim Industries Ltd. It further notes that the scheme was also unanimously approved by ABFSL's equity shareholders. So directs for the dissolution of ABNL without winding up.

**[LSI-1634-NCLT-2017-(AHM)]**

✚ **NCLT dismisses oppression/mismanagement petition hit by inordinate delay and laches** - NCLT Kolkata holds that delay and laches cannot be ignored while exercising equitable jurisdiction u/s 397/398 of the Companies Act, 1956; Acme Consultant Pvt. Ltd. filed petition against Wondermax Supply Pvt. Ltd. seeking relief against oppression and mismanagement after more than 7 years and without submitting any document regarding change in shareholding. It accepts Respondent's contention that the petition was barred by law of limitation. It further takes note of Article 137 Part II of Schedule of Limitation Act, 1963 which provides for 3 years as the period of limitation in such cases. On perusal of the submissions it held that delay was deliberate, thus dismisses the petition on the ground of huge inordinate delay and laches on part of the Petitioner. **[LSI-1655-NCLT-2017-(KOL)]**

✚ **NCLT directs insertion of legal heir's name in Register of Members based on succession-certificate** - NCLT Delhi directs Caxton Press Pvt. Ltd. and its 2 directors to insert Petitioner's name (Ms. Malti Bhargava) in the Register of Members in place of her deceased husband (Mr. Nakul Bhargava) on the basis of succession certification in her favour. It further instructs Respondents to treat the Petitioner as the legal heir and transmit shares which were held by Late Mr. Nakul Bhargava. It further directs to take needful steps to pay arrears of dividends. The NCLT states that substitution of legal heir's name in place of deceased member is made by the way of operation of law and mere substitution cannot itself legalise any illegal act. **[LSI-1656-NCLT-2017-(NDEL)]**

✚ **NCLT permits Company to compound violation of Section 211 of Companies Act, 1956** - NCLT Ahmedabad permits Haldyn Glass Ltd. to compound the violation of Section 211 of the Companies Act, 1956. It notes that Petitioner violated rules under accounting policy in relation to operating leases where lease rent was charged to Profit and Loss statement without stating the basis for charging the same as per straight line/any other systemic basis. It further imposes penalty for the offence u/s 211 of the Companies Act, 1956. With reference to Section 129 of the Companies Act, 2013 it observes that it has no

power to compound the offence, hence directs Registrar of Companies to take appropriate steps for the same. **[LSI-1658-NCLT-2017-(AHM)]**

✚ It is held that non issuing of notice for Board Meetings to the petitioner, taking and giving of loans from/to the respondent's business and attempting to sell or create a charge on the companies properties without taking consent of the petitioner(who has effective holding in the company), constitute continuous act of oppression or mismanagement, the petition would be entitled to relief u/s 402(b). **Sunil Maheshwari and Another vs. Rai Bahadur Kishor Chand & Sons (Properties) (P.) Ltd. and Others. (2017) 137 CLA 135 (NCLT)**

✚ It is held that the petitioner shareholders continue to be the shareholders till their shares are transferred according to the procedure prescribed in law and AOA of the company. They continue to enjoy the right to attend AGM and enforce his right whenever required. **Sanjivbhai Kirtibhai Patel and Others vs. Biocare Remedies (P.) Ltd. and Others (2017) 137 CLA 99 (NCLT)**

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

### **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.

### **CBDT Issues Clarification On Furnishing Statement Of Financial Transaction (SFT) & SFT Preliminary Response**

The CBDT has issued a press release dated 26th May 2017 by which it has provided important clarification on furnishing Statement of Financial Transaction (SFT) & SFT Preliminary Response u/s section 285BA of the Income-tax Act, 1961 read with Rule 114E of the Income-tax Rules, 1962. The due date for filing such SFT in Form 61A is 31st May 2017

### **Proposed Draft Income Computation and Disclosure Standards on Real Estate Transactions**

The CBDT has released "Draft Income Computation and Disclosure Standards on Real Estate Transactions" prepared by the Committee constituted by the Finance Minister. The draft ICDS is based on the Guidance Note issued on Real Estate Transactions

issued by Institute of Chartered Accountants of India (ICAI). For the purposes of providing uniformity and certainty and harmonising the same with provisions of the Act, the committee suggested certain changes in draft ICDS. The CBDT has requested stakeholders to offer comments on the draft ICDS.

**Requirement of tax deduction at source in case of entities whose income is exempted under Section 10 of the Income-tax Act, 1961 - Exemption thereof -**

CBDT vide notification dated 29<sup>th</sup> May, 2017 provided that mentioned funds or authorities or Boards or bodies, by whatever name called, referred to in section 10 of the Income-tax Act, whose income is unconditionally exempt under that section and who are also statutorily not required to file return of income as per section 139 of the Income-tax Act, there would be no requirement for tax deduction at source, since their income is anyway exempt under the Income-tax Act.

**TDS and filing of ITR in case both the parents are dead of minor Rule 31(5A)**

CBDT vide notification no. 5/2017 dated 29.05.2017 provided that It has been brought to the notice of CBDT that in cases of minors whose both the parents have deceased, TDS deductors/Banks are clubbing the interest income accrued to the minor in the hand of grandparents and issuing IOS certificates to the grandparents, which is not in accordance with the law as the Income-tax Act envisages clubbing of minor's income with that of the parents only and not any other relative. Ideally in such type of situations, the income should be assessed in the hands of the minor and the income-tax returns be filed by the minor through his/ her guardian.

**Form 101B prescribed for exercising option under section 115 BA**

The CBDT vide notification dated 2<sup>nd</sup> May 2017 introduced rule 21 AD providing for form 101B for exercising option under section 115BA(4).

**The Adhar is not required in certain cases**

The CBDT vide notification dated 11.05.2017 has prescribed that Adhar is not required in the following cases:-

an individual who does not possess the Aadhaar number or the Enrolment ID and is:-

- (i) residing in the States of Assam, Jammu and Kashmir and Meghalaya;
- (ii) a non-resident as per the Income-tax Act, 1961;
- (iii) of the age of eighty years or more at any time during the previous year;
- (iv) not a citizen of India



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

**CASE LAWS**

**Domestic Case Laws**

**[2017] 82 taxmann.com 211 (SC), Binoy Viswam vs UOI**

Those assesseees who are not Aadhaar card holders and do not comply with the provision of Section 139AA(2) intimating his Aadhaar 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.

**[2017] 82 taxmann.com 208 (Kolkata - Trib.), ITO vs Raghu Nandan Modi**

Where assessee was acting as a part time director as well as employee in a company, since he was not drawing any salary from employer company, value of rent free accommodation provided to him could not be determined in terms of section 17(2), read with Rule 3 of Income-tax Rules, 1962. Further, due to existence of employer-employee relationship between assessee and employer company, there was no question of valuation of aforesaid benefit or perquisite under section 28(iv). In such circumstances, perquisites of rent free accommodation could be determined only in pursuance of provisions of section 23(1)(a) which required to determine same as per guidelines of Municipal Corporation.

**[2017] 82 taxmann.com 164 (Chennai - Trib.), Devichand Kanthilal Shah vs CIT**

Where pursuant to agreement of sale, possession of flat was handed over and sale consideration was received, it amounted to sale of flat within meaning of section 2(47) even though sale deed was executed subsequent thereto and, in such a case, when sale proceeds were invested by assessee in construction of new flat even prior to execution of sale deed, same was eligible for deduction under section 54.

**82 taxmann.com 292 (Pune - Trib.), Ratilal Bhagwandas Construction Co. (P.) Ltd. Vs ITO**

Where as per conditions of contract entered into with sub-contractors, assessee bears expenses on account of provident fund contribution of employees including those employed through sub-contractors, since rendering of services by sub-

contractors for business of assessee was not in doubt, said expenditures was to be allowed under section 37(1).

**[2017] 82 taxmann.com 291 (Delhi - Trib.), ACIT vs Siddharth Gupta**

Where there was transaction of sale of commercial property for money between two companies and assessee held interest in both companies, but less than 10 per cent interest in transferor company as on date of transaction, transaction of transfer was not sham or colourable, and did not amount to payment for benefit of assessee, and, thus, provisions of section 2(22)(e) were not applicable and no addition could be made to income of assessee on account of 'Deemed Dividend' under section 2(22)(e).

**[2017] 81 taxmann.com 408 (Delhi), Strategic Credit Capital (P.) Ltd. Vs Ratnakar Bank Ltd.**

A sum in a bank account is not outside ambit of section 132(1) and can be subject to search and seizure as a person could be in possession of undisclosed income not only in his or her own account but in someone else's account. In instant petitions, therefore, when pursuant to search warrant, Department proceeded to search and seize not only valuable things etc. found in premises of one 'M' but also those in accounts of 8 petitioner companies as well as that of one VS, they could do so as long as they were satisfied that what constitutes M's undisclosed income was in the accounts of the 8 companies and VS.

**TRANSFER PRICING CASE LAWS**

**79 taxmann.com 208 (Chennai - Trib.), Symantec Software & Services India (P.) Ltd. Vs DCIT**

IT/ILT: Company engaged in product development and product design services would not be comparable to assessee engaged in providing software development and technical support services to its AE.

**76 taxmann.com 25 (Chennai - Trib.), iNautix Technologies India (P.) Ltd. Vs DCIT**

IT/ILT : Where turnover of assessee was Rs. 600 crores, comparable having turnover of Rs. 62.5 crores was to be excluded from comparable list

**76 taxmann.com 123 (Bombay), CIT vs Haworth (India) (P.) Ltd.**

IT/ILT : Assessee can sought exclusion of comparable on basis of Director's report available before prescribed date as per section 92(F)(iv)

**65 taxmann.com 245 (AAR - New Delhi), Dow Agro Sciences Agricultural Products Ltd., In re**

IT : Where income from proposed transaction was not chargeable to tax in India, there will be no question of applicability of sections 92 to 92F

**In case of assessee, a non-resident airlines, income arising from ground handling services and technical services rendered to other airlines at Indian airport could not be brought to tax as same was covered by Article 8 of India - Netherlands DTAA**

**INTERNATIONAL CASE LAWS**

**[2017] 82 taxmann.com 212 (SC), Honda Siel Cars India Ltd vs CIT**

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

**[2015] 64 taxmann.com 93 (Delhi), DIT vs Royal Jordanian Airlines**

Section 44BBA of the Income-tax Act, 1961 - Non-residents - Business of operation of air craft in case of (Applicability of) - Assessment years 1989-90 to 1993-94 - Whether since section 44BBA is not charging provision, but only a machinery provision, it cannot preclude an assessee from producing books of account to show that in any particular assessment year there is no taxable income - Held, yes - Whether when there is no taxable income, section 44BBA cannot be applied to bring to tax presumptive income constituting 5 per cent of gross receipts in terms of section 44BBA(2) - Held, yes [Para 38] [In favour of assessee]

**19 taxmann.com 302 (Delhi)/[2012] 50 SOT 578 (Delhi), DDIT vs KLM Royal Dutch Airlines**

IT/ILT : In case of assessee, a non-resident airlines, income arising from ground handling services and technical services rendered to other airlines at Indian airport could not be brought to tax as same was covered by Article 8 of India - Netherlands DTAA

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

**INSOLVENCY AND BANKRUPTCY CODE, 2016**

- ✚ **NCLT Principal Bench requests Insolvency and Bankruptcy Board of India to appoint Insolvency Professional** - NCLT Principal Bench requests IBBI to appoint Insolvency Professional for Maini Construction Equipment Pvt. Ltd. It takes note that Nitin Khandelwal had satisfied the requirement of sections 4 and 5 of the Insolvency and Bankruptcy Code, 2016 as goods were supplied and the default had occurred with regards to unpaid debts. It rejects Operational Debtor's plea that channels supplied by the Petitioner were defective and holds that in such case Operational Debtor should have returned the goods. It further notes that the Operational Creditor had duly informed the Respondent about its authorized quality person, present to check the quality of all the channels at the time of rolling, loading and dispatch to the factory. **[LSI-1659-NCLT-2017-(PB)]**
  
- ✚ **NCLAT mandates filing of certificate copy from "Financial Institution", confirming operational debt** - NCLAT holds that filing of certificate copy from "Financial Institution" maintaining Operational Creditor's accounts is mandatory and not directory for the purpose of confirming that there was no payment of unpaid operational debt by Corporate Debtor as prescribed u/s 9(3)(c) of the Insolvency & Bankruptcy Code, 2016. It further notes that Smart Timing Steel Ltd. is a foreign company having no account with any scheduled bank or 'Financial Institution' or "Public Financial Institution" and thus had failed to enclose any certificate from FI maintaining account of the Operational Creditor. On perusal of Sec. (3) holds that the entire provision of sub clause (3) of Section 9 is required to be mandatorily followed and it is not empty statutory formality. Rejects Appellant's argument that foreign companies having no office in India or no account in India with any Financial Institution will suffer in recovering the debt from Corporate Debtor as apart from the Code there are other provisions of recovery like suit which can be preferred by any person. **[LSI-1676-NCLAT-2017-(NDEL)]**
  
- ✚ **NCLT Mumbai holds Financial creditor eligible to file insolvency petition despite being shareholder** - NCLT Mumbai admits insolvency petition filed by Urban Infrastructure Trustee Ltd. under the Insolvency and Bankruptcy Code, 2016 as Neelkanth Township and Construction Pvt. Ltd. failed to repay debts secured against debentures issued. It rejects Corporate Debtor's contention as to evidence of default of debt and takes note of documentary evidences like

debenture certificates, Corporate Debtor's annual report which reflected issuance of debenture certificate against money received by it. It dismisses Corporate Debtor's argument that deficiency of stamp duty would invalidate debenture certificate on the ground that corporate debtor being a private company, debentures cannot be transferred like marketable securities. On the issue of pending arbitration proceedings, it points out that Sec. 62, 231 and 238 of the Code postulate "that no civil court shall have jurisdiction in respect of any matter in which the adjudicating authority is empowered by or under this court to pass any order". Lastly it rules that the application cannot be shut on the ground that applicant being a shareholder (as 90% of Corporate Debtor's funding came from financial creditor) cannot file insolvency petition under the Code absent specific bar on shareholder to file insolvency petition in the capacity of creditor under the Code. **[LSI-1669-NCLT-2017-(MUM)]**

- ✚ Hon'ble NCLAT while considering what does "dispute and existence of dispute" means for the purpose of determination of dispute in Insolvency and Bankruptcy Code, 2016 held that though the words 'prima facie' are missing in Sections 8 and 9 of the code, yet the Adjudicating Authority would examine whether notice of dispute in fact raises the dispute and that too within the parameters of two definitions 'debt' and 'default' and then it has to reject the application if it apparently finds that the notice of dispute does really raise a dispute and no other factual ascertainment is required. On the other hand, if the Adjudicating Authority finds that the notice of dispute lacks in particulars or does not raise a dispute, it may admit the application but in either case, there is neither an ascertainment of the dispute, nor satisfaction of the Adjudicating Authority. Thus it is held that the intent of the Legislature, as evident from the definition of the term dispute is that it wanted the same to be illustrative and not exhaustive. The same has to be given wide meaning provided it is relatable to the existence of the amount of the debt, quality of good or service or breach of a representation or warranty. **Capital Partners vs. Reliance Defence and Engineering Ltd. MANU/NC/0451/2017**

### **Competition Act, 2002**

- ✚ **CCI Dismisses predatory pricing allegations against Jio** - CCI dismisses information filed by Mr. C. Shanmugam and Mr. Manish Gandhi against Reliance Jio Infocom Ltd. inter alia alleging contravention of Sec. 4 of the Competition Act, 2002. It takes note of Informants' allegations that Reliance Jio Infocom had the hidden objectives of abusing its dominant position by use of its financial status and becoming a monopoly player in the telecom industry in India by

controlling the industry independently of market forces. It further takes note of Informants' contention that the above company provided all services free of cost for 3 months which demonstrated its strength to bear losses on account of predatory pricing and thereby compelling every service provider to reduce their tariffs for a short / particular period. It follows its recent order in the case of RJIO wherein no case of abuse of dominant position by the company was found. Thus it holds that the introductory offers of Reliance Jio Infocom does not amount to any contravention of the provisions of the Act. Thus rules that "no prima facie case of contravention of the provisions of Section 4 of the Act is made out against Reliance Jio Infocom". [LSI-1670-CCI-2017-(NDEL)]

- ✚ **CCI holds that there is no abuse of dominance due to presence of other major builders in residential flats market** - CCI finds no case of contravention of the Competition Act, 2002 against Goel Enclave and three others Opposite Parties as the OPs did not hold dominant position in the relevant market due to the presence of other major established developers such as Sahara, Eldeco, Parsvanath, Antriksh Group, Ansal API, Amrapali, Unitech, Omaxe etc. The Informants filed information against OPs alleging that OPs acted in collusion and connivance and launched the project for residential flats with the intention to cheat the informants and other flat owners by imposing unfair and discriminatory conditions on the maintenance of common facilities and providing them with sub-standard services and illegally constructing 8 buildings thus creating unwanted pressure on the common facilities due to increase in number of residents in the complex. CCI holds that presence of large number of major players with multiple projects provides several options for the consumers and acts as a competitive constraint for OPs from acting independently of the existing market forces in the relevant market. Accordingly, rejects Informants' contentions on the ground that information does not disclose any kind of agreement amongst any of the OPs which can be termed as anti-competitive in terms of Section 3 of the Competition Act, 2002 [LSI-1686-CCI-2017-(NDEL)]

## SEBI Laws

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

- ✚ **SEBI : Improper to intervene in broker and sub-broker disputes as arbitration-mechanism is already provided by exchange** - SEBI holds that "it is not proper on its part to intervene in dispute between broker and its sub-broker as arbitration mechanism to resolve such a dispute is already provided

by the Stock Exchange under its bye-laws/regulations". High Court has directed SEBI to consider Jaswinder Kapoor's grievance of suspension of trading rights and subsequent termination of sub-brokership by LSC Securities Ltd. and clarifies that settlement of any dispute between broker and sub-broker has to be settled with help of the exchange. If no such settlement is possible then parties may refer such dispute to arbitration in accordance with the rules, bye-laws and regulations of the exchange. It further notes that Jaswinder did not avail the recourse to such arbitration. **[LSI-1671- SEBI-2017-(MUM)]**

✚ **SAT grants time for payment of interest and penalty** - SAT holds that recovery officer is not entitled to impose interest on delayed payment of penalty. SEBI levied monetary penalty of Rs. 4 lakhs on Trillanium Technologies Ltd., on its failure to pay the aforesaid amount, hence recovery officer directed payment of interest on original penalty (amounting to Rs.6.57 lakhs). It relies on Dushyant Dalal's case to hold that retrospective imposition of penalty is not possible with effect from August 6, 2010. It further holds that recovery officer cannot demand interest for delayed penalty in absence of its imposition in original order. Hence directs the Appellant to pay Rs. 6.57 lakhs within a period 4 months from date of receipt of order. **[LSI-1672-SAT-2017-(MUM)]**

✚ **SEBI imposes penalty for failure to disclose 'trading window' under SEBI(Prohibition of Insider Trading) Regulations** - SEBI imposes penalty of Rs.1 Cr. on Falcon Tyres Ltd. for violation of the provision of Regulations 12(1) read with Clause 1.2 under Part A of Schedule I of the SEBI (Prohibition of Insider Trading) Regulations, 1992. It takes note of provisions of Regulations 12 (1) read with Clause 1.2 under Part A of Schedule I of the PIT Regulations. It further notes that even after two and half years from SEBI seeking the information, the Noticee did not provide a copy of the Code of Internal Procedure & Conduct and Code of Corporate Disclosure Practices in accordance with the PIT Regulations. Further observes that Code of Conduct as approved in the Board meeting did make provision for trading window period and also listed out occasions when such trading window would be closed, in line with the Model Code of Conduct under the PIT Regulations, however adds that "even after specific instructions from BSE to disclose to the Exchange the applicable trading window period, no such disclosure was made by the Company to BSE". **[LSI-1675- SEBI-2017-(MUM)]**

**Civil Laws**  
**By Advocate Praveen K Mittal, +91-9810826436**

- ✚ **HC grants permanent injunction against 'LEE PHARMACEUTICALS' for passing off its goods as that of 'LEE PHARMA'** - Madras HC grants ex parte permanent injunction in a suit of Lee Pharma Ltd. against Lee Pharmaceuticals restraining the Defendant from passing off by using, carrying on business under the trade mark 'LEE PHARMACEUTICALS' as and for the Plaintiff's trade name and trade mark 'LEE PHARMA' and for restraining the Defendant from using, maintaining or operating, the website 'www.leepharmaceuticals.in' which is similar to the plaintiff's website 'www.leepharma.com'. It notices from the oral and documentary evidence, that the trade name and trade mark of the defendant is deceptively similar to that of the plaintiff and thus infers that there will be confusion in the minds of the public regarding the name of the company and its products being manufactured and sold in the market. It held that the plaintiff has proved its claim for the reliefs prayed for in the suit and thus accordingly, decrees the suit in favour of the plaintiff. Further directs the defendant to pay punitive damages to the plaintiff. **[LSI-1667-HC-2017-(MAD)]**
  
- ✚ **HC grants permanent injunction for making groundless legal threats as per Section 60 of the Copyright Act, 1957** - Madras HC allows suit of Arcadia Consulting Services Pvt Ltd. for declaration against claim of J. Selvakumar for alleged ownership/entitlement over the alleged innovation of the business module of electronic health record and complete business integration for Laboratory Insurance E-Prescription Immunization being false. HC also grants ex parte permanent injunction for restraining the Defendant from making any groundless legal threats and from posting and circulating false information in public domain and claiming royalty or compensation from the Plaintiff based on the said innovations. It notices that as per the evidence adduced by the plaintiff, the defendant has falsely projected that he has innovated the business module and thus his conduct is nothing but groundless threat against the plaintiff to claim Intellectual Property Right over its business. It further states Section 60 of the Copyright Act,1957, "...is designed to protect a person against any wrongful threats relating infringement of copyright and the only relief which can be asked for is an injunction against the continuance of such threats and damages occasioned by reason of such threats". It held that the Plaintiff has proved its case as the defendant remained ex-parte and hence, decrees the suit in favour of the plaintiff. **[LSI-1665-HC-2017-(MAD)]**



✚ Section 34 in conjunction with Section 5 is clear that an Arbitration Award that is governed by Part I of the Arbitration and Conciliation Act, 1996 can be set aside only on grounds mentioned under Section 34 (2) and (3), and not otherwise. It is important to note that the 1996 Act was enacted to replace the 1940 Arbitration Act in order to provide for an arbitral procedure which is fair, efficient and capable of meeting the needs of arbitration. Further, the purpose was to provide that the tribunal gives reasons for an arbitral award to ensure that the tribunal remains within the limits of its jurisdiction and to minimize the supervisory roles of courts in the arbitral process. A court does not sit in appeal over the award of an arbitral tribunal by re-assessing or re-appreciating the evidence. An award can be challenged only under the grounds mentioned in section 34(2) of the Act.

**The National Highways Authority of India, Project Implementation Unit vs. Mahadevi and Ors. MANU/KA/1232/2017**

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