

PKMG LAW CHAMBERS

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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. : GSR258(E) MANU/DCAF/0014/2017</p>	<p style="text-align: center;">March 17, 2017</p>	<p>Subject: Companies (Indian Accounting Standards) (Amendment) Rules, 2017 - In exercise of the powers conferred by section 133 read with section 469 of the Companies Act, 2013 (18 of 2013) and sub-section (1) of section 210A of the Companies Act, 1956 (1 of 1956), the Central Government, in consultation with the National Advisory Committee on Accounting Standards, hereby makes the following rules further to amend the Companies (Indian Accounting Standards) Rules, 2015, namely:-</p> <p>1. Short title and commencement.- (1) These rules may be called the Companies (Indian Accounting Standards) (Amendment) Rules, 2017. (2) They shall come into force on the 1st day of April, 2017.</p> <p>2. Further amendments have been made in the Annexure of the principal rules.</p>
<p style="text-align: center;">2. Notification No. : S0686(E) MANU/DCAF/0012/2017</p>	<p style="text-align: center;">March 02, 2017</p>	<p>Subject: Authorisation of Shri Rajeev Kher, the senior-most Member in the Competition Appellate Tribunal to discharge the functions of the</p>

		<p>Chairperson in the Tribunal for the temporary period specified-</p> <p>In exercise of the powers conferred by sub-section (2) of section 53J of the Competition Act, 2002 (12 of 2003), the Central Government hereby authorised Shri Rajeev Kher, the senior-most Member in the Competition Appellate Tribunal (hereinafter referred to as the Tribunal), to discharge the functions of the Chairperson in the Tribunal for a period of six months with effect from the 12th day of December, 2016 or until further orders, whichever is earlier.</p>
<p>3. Notification From File No. : 01/5/2016-CL-V MANU/DCAF/0011/2017</p>	<p>February 28, 2017</p>	<p>Subject: Companies (Transfer of Pending Proceedings) Amendment Rules, 2017-</p> <p>In exercise of the powers conferred under sub-sections (1) and (2) of section 434 of the Companies Act, 2013 (18 of 2013) read with sub-section (1) of section 239 of the insolvency and Bankruptcy Code, 2016 (31 of 2016) (hereinafter referred to as the Code), the Central Government hereby makes the following rules further to amend the Companies (Transfer of Pending Proceedings) Rules, 2016, namely:-</p> <p>1. Short title and Commencement.-</p> <p>(1) These rules may be called the Companies (Transfer of Pending Proceedings)</p>

		<p>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 (Transfer of Pending Proceeding) Rules, 2016, in rule 5, in sub-rule (1) in the proviso for the words "sixty days" the words "six months" shall be substituted.</p>
<p>4. Notification From File No. : 05/23/2016-IEPF MANU/DCAF/0013/2017</p>	<p>February 28, 2017</p>	<p>Subject: Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Amendment Rules, 2017-</p> <p>In exercise of the powers conferred by sub-sections (1), (2), (3), (4), (8), (9), (10) and (11) of section 125 and sub-section (6) of section 124 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules, to amend the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016, namely:-</p> <p>1. (1) These rules may be called the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Amendment Rules, 2017. (2) They shall come into force from the 28th February, 2017.</p> <p>2. Further amendments have been made in Rule 2(1)(d) and Rule 3(2)(g).</p> <p>3. Rules 6 and 7 have been substituted.</p>

Companies Act, 2013 Case Laws **By Advocate P.K. Mittal, +91-9811044365**

- ✚ NCLT, New Delhi holds that respondent being the rightful owner of the website cannot be restrained from the use of his own website even though it may be synonymous with the business of Respondent company or may have been attained certain goodwill. Holds that the website wouldn't become the exclusive property of the company in the absence of any written agreement, merely on account of permissive use as a business platform of Respondent Company. **[LSI-1441-NCLT-2016-(NDEL)]**

- ✚ Mumbai NCLT dismisses amendment application seeking to insert new material facts, giving rise to a new cause of action to the petitioners for enlarging their case on the grounds of fraud against the respondent company. States that amendment can be allowed only if it is necessary for determination of the real question in controversy. As the real controversy in the petition pertained to the alleged transfer of shares and subsequent rectification of register of members whereas the impleadment not being related to main petition is liable to be rejected. **[LSI-1425-NCLT-2017-(MUM)]**

- ✚ Mumbai NCLT dismisses cross petitions and first petition wherein the petitioners alleged siphoning of funds, misappropriation of immovable property, use of company premises for personal gains of the respondent and removal of petitioner without due notice, as baseless. Notes that removal of director, for carrying out competing business with that of the company, was done after due compliance of law and procedure. Holds that it did not suffer any procedural lacuna and thus was not oppressive. **[LSI-1422-NCLT-2017-(MUM)]**

- ✚ Where the petitioners seek to obtain by legal process a remedy which is time barred to a great extent, they have to satisfy the Tribunal that it was beyond their knowledge and their claim is within time. **Sanjay Agarwal and Another v. Meghalaya Finlease (P.) Ltd. and Ors. [2017] 136 CLA 284 (NCLT)**

- ✚ Once the High Court had ordered refund to share applicants, it was the duty of the petitioner-company to have made available adequate funds to the respondent banks to issue refund warrant to the share applicants towards the principal and the interest accrued thereon. **A P L Industries Ltd. v. Securities and Exchange Board of India [2017] 136 CLA 231 (Del.)**

✚ Where the subject-matter of the petition is more in the nature of a dispute amongst the members of a HUF for their coparcenary rights, then for establishment of such rights the petitioners are required to have recourse elsewhere and not before the Tribunal. Such dispute not being amenable to the jurisdiction of NCLT is liable to be dismissed. **Sanjay Agarwal and Another v. Meghalaya Finlease (P.) Ltd. and Ors. [2017] 136 CLA 284 (NCLT)**

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

CBDT Issues SOP For Verification Of Cash Transactions Relating To Demonetisation To Curb Malpractices & Tax Evasion

The CBDT has issued Instruction No. 03/2017 dated 21.02.2017 by which it has meticulously set out the Standard Operating Procedure (SOP) that has to be followed by the Assessing Officers for verification of cash transactions relating to demonetisation.

The CBDT has reiterated that no independent enquiry or third party verifications are required to be made by the Assessing Officer outside the online portal. Whatever information is necessary during verification, the same has to be collected through the person under verification using online platform only. Even telephonic queries are to be avoided.

It has also been directed that a holistic view should be adopted looking into the various aspects of the circumstances leading to deposit of cash (e.g. family-size, financial status and background of person) and uniformity in approach must be adopted while forming a view about quantum of undisclosed income.

The CBDT has also directed that it should be ensured that the communications made online with the persons under verification should be in very polite language without containing any element of threat or warning. No show cause of any kind should be given.

CBDT issues clarification for non applicability of provision of Sec 6(3)(ii) relating POEM on company having turnover of 50 lakhs or less

CBDT issues clarification dated 23.02.2017 that provision of Section 6(3)(ii) relating to POEM does not apply to a company having turnover of 50 Lakhs or less.

Combined form for application for PAN and TAN

CBDT vide notification No.GSR 117 E dated 9th February 2017 has amended rule 114 and 114A to provide for joint application of PAN and TAN.

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

Domestic Case Laws

[2017] 78 taxmann.com 277 (Chandigarh - Trib)

A trust in process of establishing educational and medical institution cannot be refused registration under section 12AA on ground that it has not yet commenced charitable or religious activity.

[2017] 78 taxmann.com 263 (Delhi)

Amounts paid as part of lease premium in terms of time-schedule(s) to Lease Deeds executed between petitioners and Greater Noida Industrial Development Authority(G.NOIDA), or bi-annual or annual payments for a limited/specific period towards acquisition of lease hold rights are not subject to TDS, being capital payments.

[2017] 78 taxmann.com 187 (Mumbai - Trib.)

Amount paid to ex-employees under settlement is not 'profit in lieu of salary' under section 17(3)(i)

- Under clause (i) of section 17(3) of the Act, in order to characterise a particular payment received from the employer, on termination of the employment, as "profits in lieu of salary", it has necessarily to be shown that this amount is due or received as "compensation". The word "compensation" is not defined under the Act. Therefore, one has to take into consideration the ordinary connotation of this expression in common parlance. It has to be in the nature of something awarded to compensate for loss, suffering or injury. When translated in the context of employment, it would imply a monetary and non-monetary amount to be given to the employee in return for some services rendered by him. Inherent in this would be the obligation of the employer to pay some amount to the employee to "compensate" him. It would also mean that the employee gets a vested right to get such an amount. In the case under consideration there the ex employee did not get vested right to receive the amounts in question. A settlement was arrived at to avoid

litigation-there was no obligation on part of the employer to pay some amount to the employees to compensate them.

[2017] 78 taxmann.com 188 (Mumbai - Trib.)

The assessee was not in the business of purchase and sale of patents, so the sale proceed of the assignment agreement could not be treated a revenue receipt. Patent is a legal document that is granted by the Sovereign and gives an inventor exclusive right to make/use/sale an invention for a specified number of years. Section 55(2)(a) talks of right to manufacture, produce or process any article or thing. Therefore, consideration for sale of patent (,the right to manufacture/ produce/ process) would be taxable under the head capital gains and cost has to be taken at Rs. Nil.

[2017] 78 taxmann.com 242 (Delhi - Trib.)

IT: No TDS is deductible under section 192 by hotel-employer from TIPS collected from clients and disbursed to staff. Since the contract of employment is not the proximate cause for the receipts of TIPS by the employee from a customer. Therefore, even if it is collected in the fiduciary capacity by the employer, it would be outside the dragnet of sections 15 & 17 of the Act and not liable for TDS u/s 192.

[2017] 78 taxmann.com 161 (SC)

Section 139, read with sections 56, 68 and 143, of the Income-tax Act, 1961 and section 13 of the Prevention of Corruption Act, 1988 - Return of income (General) - Whether income-tax returns and orders would not *ipso facto* either conclusively prove or disprove the charge of disproportionate assets (acquisition of assets disproportionate to known sources of income) and can at best be pieces of evidence which have to be evaluated along with the other materials on record – Held Yes

[2017] 78 taxmann.com 128 (Delhi - Trib.)

IT: It is well established fact that the practice of yoga gives positive reliefs in the cases of asthma, migraine, hyper tension, stress etc. Thus, even for AYs prior to AY 2016-17, Yoga qualifies as 'medical relief'.

[2017] 78 taxmann.com 272 (Ahmedabad - Trib.)

Where assessee was engaged in sales and purchase of shares and it had declared certain income as dividend income, which was exempt from tax, AO had correctly applied formula prescribed under rule 8D(2)(ii) for determination of expenditure attributable to dividend income.

Where assessee had declared income both by way of long-term capital gain and short-term capital gain arising from sale of shares, lower authorities were not justified in treating short-term capital gain as business income on plea that shares were held for less than 30 days during year.

[2017] 78 taxmann.com 65 (Punjab & Haryana)

IT : Where an assessee claims that no expenditure has been incurred by him in relation to exempt income, Assessing Officer can resort to Rule 8D only if having regard to accounts of assessee he is not satisfied with correctness of claim of assessee that no expenditure has been incurred by him in relation to income which does not form part of total income under Act.

International Tax

[2017] 78 taxmann.com 264 (Hyderabad - Trib.) (SB)

If the rate of tax applicable under DTAA is lower than the 20% tax rate prescribed under section 206AA, TDS would have to be deducted at such lower rate even if the non-resident deductee fails to furnish his PAN.

[2017] 78 taxmann.com 101 (Kolkata - Trib.)

IT/ILT: Income earned by assessee a company incorporated in Netherlands from on-shore supply of software and licenses for mere purpose of operating equipment is for 'copyright' in such software because software in question is embedded in equipment supplied under project and cannot be regarded as giving any independent right to use software. Accordingly, such consideration is for purchase of a 'copyrighted article' and hence not taxable as 'royalty'.

Transfer Pricing

[2017] 78 taxmann.com 271 (Kolkata - Trib.)

IT/ILT: Where a company had IPR in Schedule of fixed assets and whose business model was completely different from that of assessee, which had no IPR, said company would be incomparable with assessee.

IT/ILT: Where all details were given by assessee in its transfer pricing study and TPO in earlier year himself allowed working capital and risk adjustment at 2 per cent, similar adjustments were to be allowed in present assessment year also.

[2017] 78 taxmann.com 275 (Mumbai - Trib.)

A company is excludible or ground of existence of an extraordinary event, which has an effect on its financial result, thereby impacting its comparability.

IT/ILT : A transaction of subscription of shares could not be re-characterized as loan without any material or evidence indicating its nature.

IT/ILT : Guarantee commission of 1 per cent should be chargeable on guarantee provided to bank by assessee on behalf of its AE.

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

- ✚ **Commission prima facie finds OP's conduct abusive of dominant position, orders investigation** - Competition Commission of India (CCI) orders investigation by Director General (DG) post finding merit in a batch of five similar complaints alleging abuse of dominant position by the opposite party (OP), GAIL India Ltd.; It was alleged that OP imposed unfair and discriminatory conditions under the Gas Sale Agreement (GSA) and its conduct was not as contemplated in under the GSA; CCI prima facie opines that conduct of the OP amounted to contravention of provisions of Sec. 4 of the Competition Act; Conditions complained against the OP were non-submission of renewed letter of credit, clauses like 'take or pay liability', clauses like 'suspension' being unilaterally and arbitrarily replaced by 'disconnection'; Observes that the OP was a significant player in the business of supply of gas across India with relatively larger size, resources and expertise when compared to any other player in the country and thus, enjoyed dominant position; Points out that in the instant case, as the Informant couldn't choose a supplier operating in a different area than where the plant was located, each area constituted a separate and distinct relevant geographic market :CCI [LSI-1389-CCI-2016-(NDEL)]

- ✚ **CCI: Unilateral increase in flat's sale price without enabling stipulation amounts to anti-competitive act** - CCI holds that unilaterally raising the sale price of a flat with no stipulation in the brochure or allotment letter of the scheme is anti-competitive u/s 4(2)(a)(ii) of the Competition Act, 2002; Notes that Ghaziabad Development Authority (OP/GDA) had arbitrarily increased the sale price of the flat from 2 lakhs to 7 lakhs without any enabling stipulation in the brochure/allotment letter of the scheme; Further observes that allottees of the flats belonged to the weaker sections of the society and were dependent upon the OP for the residential flat; Thus admits Shri Satyendra Singh's (Informant) allegation that OP has abused its dominant position by arbitrarily increasing the price of the said flat in contravention of the provisions of Section 4; Notes that there were very few other players in the relevant market other than the OP who were developing and selling low cost residential flats targeted for economically weaker sections of the society and few other options were available that could substitute the buyer in the relevant market; Holds that OP was abusing its dominant position in the relevant market, by imposition of unfair price on the Informant and other allottees of flats: CCI **[LSI-1408-CCI-2017-(NDEL)]**

- ✚ **CCI: No competition issue involved in sale of a defective laptop by HP Inc. -** CCI holds that no competition issue was involved in the sale of a defective laptop & deficiency in the after-sale repair services; Dr. S.K. Mittal (Informant) alleged that HP Inc. (OP) has abused its dominant position u/s 4 of the Competition Act, 2002 by selling a defective, spurious and sub-standard laptop to him and not providing the desired after-sale repair services for the defective laptop; Defines relevant market as 'market for laptops including its spares and after-sale services in India'; Holds that in spite OP being is a major player in the fragmented market, however, many other leading players such as Dell, Lenovo, Apple, etc. were also operating in the relevant; Thus rules that with the presence of such prominent brands, consumers had adequate choice in the relevant market and OP did not enjoy dominant position in the relevant market: CCI **[LSI-1409-CCI-2016-(NDEL)]**

- ✚ **IBBI dismisses CS's application for registration as "Insolvency Professional"** - The Insolvency and Bankruptcy Board of India dismisses a Company Secretary's application for registration as 'Insolvency Professional' under Regulation 6 of the IBBI citing pendency of criminal proceedings. Notes that Zenith Birla (India) Ltd. had accepted deposits from public u/s 58A of the Companies Act, 1956 in 2010 and 2011 wherein the applicant Mr. Vimal Prakash Dubey served as CS. Further notes that, on failure to repay the deposits, CLB had directed the company to repay deposits while also instructing

the depositors to approach the ROC for initiating prosecution proceedings against the company and its officers. On noting that three criminal proceedings were pending against the applicant before the Additional Chief Metropolitan Magistrate, opines that registration ought not to be granted to the applicant as he was not a fit and proper person to be registered as an 'Insolvency Professional'. [LSI-1434-2017-(NDEL)]

SEBI Notifications and Circulars
By CS P.K. Mittal, Advocate, +91-9811044365

Notification & Circular No.	Date of Issue	Subject
<p style="text-align: center;">1. Circular No. : SEBI/HO/MRD/DRMNP /CIR/P/2017/24 MANU/SDIP/0001/2017</p>	<p style="text-align: center;">March 16, 2017</p>	<p>Subject: Disclosures relating to regulatory orders and arbitration matters on websites of Clearing Corporations -</p> <p>1. In order to improve transparency in disclosing the regulatory orders and arbitration awards issued by clearing corporations, it has been decided that all regulatory orders i.e. orders against clearing members and arbitration / appellate awards by arbitrators need to be made available to investors.</p> <p>2. Accordingly, it has been decided that the Clearing Corporations shall post all regulatory orders and arbitration / appellate awards issued since June 20, 2012, on their websites within 30 days. Further, all regulatory orders and arbitration / appellate awards as and when issued by Clearing Corporations from the date of this circular shall be posted on their website immediately.</p> <p>3. In addition to the above, Clearing Corporations shall disseminate information with respect to brief profile, qualification, areas of experience / expertise, number of arbitration matters handled, pre-</p>

		<p>arbitration experience, etc. of the arbitrators on their website.</p> <p>4. The Clearing Corporations are also advised to:</p> <ol style="list-style-type: none"> a. disseminate the provisions of this circular on the website; b. communicate to SEBI, the status of the implementation of the provisions of this circular in the Monthly Development Report. <p>5. This circular is being issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.</p>
<p>1. Circular No. : SEBI/HO/CFD/DCR1/ CIR/P/2017/22 MANU/SREG/0013/20 17</p>	<p>March 15, 2017</p>	<p>Subject: SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 - Amendments -</p> <p>1. SEBI vide Circular No.- SEBI/CFD/DCR/SAST/3/2011/11/2 dated November 22, 2011 has, inter-alia, issued the format for submitting the draft letter of offer (DLOF) with SEBI in terms of SAST Regulations and certain instructions to be followed by merchant bankers while filing the DLOF .</p> <p>2. Accordingly, Merchant Bankers have been filing the DLOF and certain information about the acquirer, target company, promoter etc. as per the prescribed format.</p> <p>3. It has been decided, in consultation with market participants, to revise the time period for which information is required to be filed with SEBI, in line with the provisions relating to maintenance of records under the Companies Act, 2013. The format and instructions prescribed</p>

		<p>vide aforementioned Circular shall stand modified as given at Annexure.</p> <p>4. This circular shall be applicable to all the offers where the draft letter of offer is filed with SEBI after the date of this Circular. Merchant Bankers are advised to follow the said updated format and instructions while filing the draft letter of offer with SEBI.</p> <p>5. This circular is issued in exercise of the powers conferred under Section 11 read with Section 11A of the Securities and Exchange Board of India Act, 1992.</p> <p>6. This circular is available on SEBI website. under the categories "Legal Framework" and "Takeovers"</p>
<p>2. Circular No. : SEBI/HO/MIRSD/MIR SD6/CIR/P/2017/20 MANU/SDEP/0001/20 17</p>	<p>March 10, 2017</p>	<p>Subject: Redressal of complaints against Stock Brokers and Depository Participants through SEBI Complaints Redress System (SCORES) -</p> <p>1. SEBI has commenced processing of complaints through SCORES since June, 2011.</p> <p>2. With a view to make the complaint redressal mechanism through SCORES more efficient, all stock brokers and depository participants are directed to address/redress the complaint within a period of 15 days from the receipt of the complaint. In case additional information is required from the complainant, the same shall be sought within 7 days from the receipt of the complaint. In such cases, the period of 15 days shall run from the receipt of additional information.</p> <p>3. Stock Exchanges and Depositories are advised to develop a system for execution of the above.</p> <p>4. The circular is issued in partial</p>

		<p>modification of earlier circulars dated August 25, 2011 and September 12, 2011 to the extent as stated above and in exercise of powers conferred upon SEBI under Section 11(1) of the Securities and Exchange Board of India Act, 1992.</p> <p>5. The circular is available on SEBI website. under the categories "Legal Framework" and "Circulars".</p>
<p>3. Press Release No. : 15/2017 MANU/SPRL/0015/20 17</p>	<p>March 01, 2017</p>	<p>Subject : Shri Ajay Tyagi takes charge as Chairman, SEBI -</p> <p>Shri Ajay Tyagi took charge as Chairman, Securities and Exchange Board of India, today. Prior to this, Shri Tyagi was Additional Secretary, Department of Economic Affairs, Ministry of Finance, Government of India, handling the portfolios of Capital Market Division, Investment Division, Infrastructure Division and Currency and Coinage Division.</p> <p>Shri Tyagi, an Indian Administrative Service Officer of Himachal Pradesh Cadre, has held several responsible positions with distinction in the State and Central Governments.</p> <p>He did his graduation in Electrical Engineering and Post Graduation in Computer Science. He also did his Masters in Public Administration from Harvard University.</p>

- ✚ **SEBI revises regulatory framework for sanctioning scheme of arrangement of listed entities** - SEBI revises regulatory framework for schemes of arrangement of listed entities, except for schemes which solely provide for merger of wholly owned subsidiary with parent company; In case of allotment of shares only to a select group of shareholders or shareholders of unlisted companies pursuant to such schemes, pricing provisions of Chapter VII of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 shall be followed; Listed entity to pay a fee to SEBI at 0.1% of paid-up share capital of listed / transferee / resulting company, whichever is higher, post sanction of proposed scheme, subject to cap of Rs. 5 lakhs; Lists down requirements to be fulfilled by listed entity before scheme of arrangement is submitted for sanction by NCLT, such as choosing a designated Stock Exchange, submission of documents, valuation report and auditors certificate etc : SEBI **LSI**

- ✚ **SEBI directs stock brokers / depository participants to redress complaints within 15 days through SCORES** - SEBI issues Circular for efficient and speedy redressal of complaints through SEBI Complaints Redress System (SCORES); Directs stock brokers and depository participants to address/redress complaint within 15 days from the receipt thereof; In case additional information is required from the complainant, same shall be sought within 7 days from receipt of complaint; In such cases, period of 15 days shall run from date of receipt of such additional information; Directs Stock Exchanges and Depositories to develop system for execution of the same : SEBI **LSI**

- ✚ **SEBI imposes penalty for violation of Regulation 3(1) of SEBI (SAST) Regulations** - SEBI imposes penalty of Rs. 10 lakhs on ISG Traders Ltd ('Noticee') u/s 15H(ii) of the SEBI Act for violation of Regulation 3(1) read with Regulations 3(3) and 1391) of the SEBI (SAST) Regulations, 2011; Stone India Ltd ("Target Company") issued 20 lakh warrants to the Noticee pursuant to the resolution passed at AGM held on September 25, 2013 in three tranches over a period of three years; Notes that the increase in shareholding of Noticee from 24.57% to 30.66% of the total share capital of the Target Company was on conversion of the last tranche; Also notes that there was change in control or management of the Target Company due to Noticee/ Promoter Group's increase in the shareholding ; Observes that the Noticee failed to make a public announcement thereby violating Regulation 3(1): SEBI [**LSI-1429- SEBI-2017-(MUM)**]

✚ **HC: Debars ex-dealer from using 'MRF' house mark for its tyre business; Grants ex parte permanent injunction** - Bombay HC decrees a suit seeking permanent injunction against trademark and copyright infringement and passing off in favour of MRF Ltd. ('Plaintiff'); Permanently restrains P. Annadurai, the sole proprietor of Dinesh Tyres ('Defendant', also the ex-exclusive dealer of the Plaintiff) from using Plaintiff's artistic works and registered trademarks in - 'MRF', Observes that a dealership agreement existed between the parties which was terminated by the Plaintiff and no permission was granted to the Defendant to sell tyres under the 'MRF' corporate trademarks, Defendant's act of selling tyres identical to the Plaintiff's goods under the MRF corporate trademarks/ artistic works and the "MRF Exclusive Dealer Board" was nothing but infringement; Holds that "Once the permission granted to the defendant to use the plaintiff's trademark MRF has already been terminated by the plaintiff, the defendant cannot use the trademark of the plaintiff"; Concludes that Plaintiff had made out a case of infringement of their trademark 'MRF' by the Defendant and also a case for grant of injunction and other reliefs namely of, passing off, copyright infringement, surrender of materials bearing Plaintiff's corporate MRF trademarks/ artistic works and damages of Rs. 25,01,000/- is prayed for; **[LSI-1426-HC-2017-(MAD)]**

✚ **HC: Use of mark "JAI DURGA" for ghee products infringes registered TM "DURGA"; Grants ex parte permanent injunction** - Bombay HC decrees a suit seeking permanent injunction against trademark and copyright infringement and passing off in favour of Durga Dairy Ltd. (Plaintiff No. 1) and its exclusive dealer in the state of Tamil Nadu, Sri Thirumala Venkateswara Agencies (Plaintiff No. 2); Permanently restrains Sri Shakti Dairy Products (Defendant) from using the mark 'JAI DURGA' and a device of a lady dressed in a rural costume carrying a pot for its ghee products; Notes that Plaintiffs had been using the trademark "DURGA" for their ghee products since 1981 and also held its registration, that stood renewed till 2019; Further notes that Plaintiffs also held a trade mark registration and copyright in a 'Lady device' dressed in a rural costume carrying a pot used on the packaging of their ghee products; Observes that Defendant's packaging was nothing but a copy of the Plaintiff's packaging primarily because of Defendant's - (i)use of the phonetically similar mark "DURGA" on its packaging, (ii)adoption of the identical picture of the lady with the pot on its packaging, and (iii)use of the impugned mark and device for identical products/goods i.e. ghee; Holds that Defendant was infringing the trademark of the Plaintiffs and causing confusion and deception among consumers; Denies Plaintiff the relief with respect to rendition of accounts due

to absence of any evidence to show that Defendant had gained profits by using the trade mark of the Plaintiffs and Plaintiffs' admission to confine their relief to the aspect of injunction alone; **[LSI-1427-HC-2017-(MAD)]**

- ✚ Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a life span for such legal remedy for the redress of the legal injury so suffered. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim 'interest reipublicae ut sit finis litium' (it is for the general welfare that a period be put to litigation). The idea is that every legal remedy must be kept alive for a legislatively fixed period of time. **Gobindo Chatterjee Vs. Income Tax Officer MANU/IK/0027/2017**

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

- ✚ **Declares unilaterally appointed arbitrator's award null and void u/s 21 of Arbitration and Conciliation Act** - Delhi HC sets aside the award passed by the Arbitrator as it was opposed to Sec. 21 of Arbitration and Conciliation Act, 1996; Alupro Building Systems Pvt. Ltd. (Petitioner) had challenged the impugned award as there was no arbitration agreement between the parties and that unilateral appointment of the arbitrator was contrary to the Act; Takes note of Petitioner's plea that u/s 21 of the Act Ozone Overseas Private Limited (Respondent) cannot proceed to arbitration without issuing notice to Petitioner invoking the arbitration clause; Holds impugned award to be null and void as there was no arbitration agreement between the parties which could be validly invoked by the Respondent and thus arbitrator lacked jurisdiction to enter upon reference and proceed with the arbitration; Highlights that Sec. 12(2) of the Act required an Arbitrator from the time of his appointment and throughout the arbitral proceedings, to mandatorily disclose to the parties, "without delay" and "in writing any circumstances unless they have already been informed of them by him";Relies

on coordinate bench ruling in Taipack Limited & Ors. and Madras HC judgment in NSK India Sales Company P. Ltd. [LSI-1417-HC-2017-(DEL)]

- ✚ **Section 8(2) of The Arbitration and Conciliation Act, 1996 states that The Application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy** – There is no violation of the above section if the original or a certified copy of agreement is not filed along with section 8 application but the same is filed before the entertainment of such application. **Binod Kr. Bawri and Ors. V. Calcom Cement Ltd. and Ors. [2017] 136 CLA 227 (NCLT)**

Money-Laundering Laws **By Advocate Pradeep K Mittal, +91-9811044365**

Steps taken by Government to curb the generation of black money **Dated 10th March, 2017**

Action against black money is an on-going process. Such actions include policy-level initiatives, effective enforcement action on the ground, putting in place robust legislative and administrative frameworks, systems and processes with due focus on capacity building and integration and mining of information through increasing use of information technology.

Recent major steps in this regard include - (i) Constitution of the Special Investigation Team (SIT) on Black Money under Chairmanship and Vice-Chairmanship of two former Judges of Hon'ble Supreme Court, (ii) Enactment of a comprehensive law - 'The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015' to specifically deal with black money stashed away abroad, (iii) Constitution of Multi-Agency Group (MAG) consisting of officers of Central Board of Direct Taxes (CBDT), Reserve Bank of India (RBI), Enforcement Directorate (ED) and Financial Intelligence Unit (FIU) for investigation of recent revelations in Panama paper leaks, (iv) Proactively engaging with foreign governments with a view to facilitate and enhance the exchange of information under Double Taxation Avoidance Agreements (DTAAs)/Tax Information Exchange Agreements (TIEAs)/Multilateral Conventions, (v) Proactively furthering global efforts to combat tax evasion/black money, inter alia, by joining the Multilateral Competent Authority Agreement in respect of Automatic Exchange of Information (AEOI) and having information sharing arrangement with USA under its Foreign Account Tax Compliance Act (FATCA), (vi) Renegotiation of DTAAs with other countries to

bring the Article on Exchange of Information to International Standards and expanding India's treaty network by signing new DTAA's and TIEAs with many jurisdictions to facilitate the exchange of information and to bring transparency, (vii) Enabling attachment and confiscation of property equivalent in value held within the country where the property/proceeds of crime is taken or held outside the country by amending the Prevention of **Money-laundering Act, 2002** through the Finance Act, 2015, (viii) Enactment of the Benami Transactions (Prohibition) Amendment Act, 2016 to amend the Benami Transactions (Prohibition) Act, 1988 with a view to, inter alia, enable confiscation of Benami property and prosecution of benamidar and the beneficial owner, (ix) Initiation of the information technology based 'Project Insight' for strengthening the non-intrusive, information driven approach for improving tax compliance, and (x) Launching of 'Operation Clean Money' on 31st January 2017 for collection, collation and analysis of information on cash transactions, extensive use of information technology and data analytics tools for identification of high risk cases, expeditious e-verification of suspect cases and enforcement actions in appropriate cases, which include searches, surveys, enquiries, assessment of income, levy of taxes, penalties, etc. and filing of prosecution complaints in criminal courts, wherever applicable.

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