

MONTHLY LAW REPORT FOR OCTOBER, 2017

PKMG LAW CHAMBERS

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

Notification & Circular No.	Date of Issue	Subject
<p>1. General Circular No. : 14/2017 MANU/DCAF/0095/2017</p>	<p>27th October, 2017</p>	<p>Subject: Relaxation of additional fees and extension of last date of filing AOC-4 and AOC-4 (XBRL non-IndAS) under the Companies Act, 2013 -</p> <p>The Ministry of Corporate Affairs has extended the date for filing of AOC-4 (XBRL E-forms using Ind AS) for the financial year 2016-2017 without additional fee till 31.03.2018 vide General Circular No. 13/2017 dt 26.10.2017. Keeping in view the requests received from various stakeholders, for allowing extension of time for filing of financial statements for the financial year ended 31.03.2017 on account of various factors, it has been decided to extend the time for filing e-forms AOC-4 and AOC-4 (XBRL non-IndAS) and the corresponding AOC-4 CFC e-forms upto 28.11.2017 without levying additional fee.</p> <p>2. This issues with the approval of the competent authority.</p>
<p>2. General Circular No. : IBC/01/2017 MANU/DCAF/0093/2017</p>	<p>25th October, 2017</p>	<p>Subject: Clarification regarding approval of resolution plans under Section 30 and 31 of Insolvency and Bankruptcy Code, 2016 - Clarification has been sought by stakeholders as to whether approval of shareholders/members of the corporate debtor/company is required for a resolution plan at any stage during the process for its consideration and approval as laid down under sections 30 and 31 of the Insolvency and Bankruptcy Code, 2016 and after approval during its implementation, for any actions contained in the resolution plan which would</p>

normally require specific approval of shareholders/members under provisions of Companies Act, 2013 or any other law. The clarification is sought in view of the requirement under section 30(2)(e) of the Code for the resolution professional to confirm that each resolution plan received by him does not contravene any of the provisions of the law for the time being in force.

2. The matter has been examined in the Ministry in the light of provisions of sections 30 and 31 of the Code which provide a detailed procedure from the time of receipt of resolution plan by the resolution professional to its approval by the Adjudicating Authority and there is no requirement for obtaining approval of shareholders/members of the corporate debtor during this process.

3. It is understood that the requirement of section 30(2) (e) of the Code is to ensure that the resolution plan(s) considered and approved by the Committee of Creditors and the Adjudicating Authority is compliant with the provisions of the applicable laws and therefore is legally implementable. For example, a resolution plan must not contemplate 100% foreign investment in a corporate debtor if the FDI policy/relevant foreign exchange laws permit foreign investment only up to 75% in the relevant sector of the industry; it should be compliant with requirements such as restrictions on an Indian entity to issue securities to a person resident outside India under Foreign Exchange Management Act, 1999, etc. The purpose is to prevent approval of resolution plans, which are not legally implementable.

4. Section 31(1) of the Code further

		<p>provides that a resolution plan approved by the Adjudicating Authority shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan. The notes to clauses appended to the Insolvency and Bankruptcy Code, 2015 (Bill) in respect of such clause explains: "Therefore, if a plan requires stakeholders to do or not do certain actions for the successful implementation of a plan, it shall be binding on all the affected parties who shall be bound to undertake the actions set out in the plan".</p> <p>5. In view of above, it is also clarified that the approval of shareholders/members of the corporate debtor/company for a particular action required in the resolution plan for its implementation, which would have been required under the Companies Act, 2013 or any other law if the resolution plan of the company was not being considered under the Code, is deemed to have been given on its approval by the Adjudicating Authority.</p> <p>6. This issues with the approval of competent authority.</p>
<p>3. Order No. : SO3400(E) MANU/DCAF/0091/2017</p>	<p>23rd October, 2017</p>	<p>Subject: Companies (Removal of Difficulties) Second Order, 2017 - Whereas, sub-section (1) of section 247 of the Companies Act, 2013 provides that where a valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets or net worth of a company or its liabilities, it shall be valued by a person having such qualifications and experience and registered as a valuer in such manner, on such terms and conditions as may be prescribed and appointed by the audit</p>

	<p>committee or in its absence by the Board of Directors of that company. Sub-section (2) of section 247 provides for the functions and duties of registered valuers. Sub-sections (3) and (4) of said section provide for the punishment and the liability of the valuers;</p> <p>And, whereas, a difficulty has arisen in view of the fact that there are a number of different organisations dealing with various, distinct group of assets, such as land and building, machinery and equipment, having separate set of valuers for valuation;</p> <p>And, whereas, unless these different organisations are recognised, it would be difficult to ensure the required level of regulation for the valuers by registering them directly with the Central Government and further, it is necessary to recognise the varying standards of internal procedures and conduct practiced in these organisations to improve the standards in valuations in order to register the valuers under the said section;</p> <p>And, whereas, although the said section provides for valuation to be made by a person having such qualifications and experience and registered as a valuer in such manner, on such terms and conditions as may be prescribed, there is a need to provide clarity and remove the difficulty of having no reference to an organisation to which the valuer may belong;</p> <p>Now, therefore, in exercise of the powers conferred by sub-section (1) of section 470 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following Order to remove the above said difficulties, namely:-</p>
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		<p>1. Short title and commencement.--</p> <p>(1) This Order may be called the Companies (Removal of Difficulties) Second Order, 2017.</p> <p>(2) It shall come into force from the 23rd day of October, 2017.</p> <p>2. In the Companies Act, 2013, in section 247, in sub-section (1), for the words "a person having such qualifications and experience and registered as a valuer in such manner, on such terms and conditions as may be prescribed", the words "a person having such qualifications and experience, registered as a valuer and being a member of an organisation recognised, in such manner, on such terms and conditions as may be prescribed" shall be substituted.</p>
<p>4. Notification From File No. : 01/27/2013-CL-V(Part-I) MANU/DCAF/0092/2017</p>	<p>23rd October, 2017</p>	<p>Subject: Delegation of powers and functions under Section 247 of the Companies Act, 2013 to Insolvency and Bankruptcy Board of India -</p> <p>In exercise of the powers conferred by section 458 of the Companies Act, 2013, the Central Government hereby delegates the powers and functions vested in it under section 247 of the said Act to the Insolvency and Bankruptcy Board of India, subject to the condition that the Central Government may revoke such delegation of powers or it may exercise the powers under the said section, if in its opinion such a course of action is necessary in the public interest.</p> <p>2. This notification shall come into force with effect from the date of its publication in the Official Gazette.</p>
<p>5. General Circular No. : 12/2017 MANU/DCAF/0090/2017</p>	<p>16th October, 2017</p>	<p>Subject: Transfer of Shares to IEPF Authority - Pursuant to second proviso to Rule 6 of Investor Education and Protection Fund Authority (Accounting,</p>

Audit, Transfer and Refund) Rules, 2016 as amended time to time, wherein the seven years period provided under sub-section (5) of section 124 is completed for unpaid/unclaimed dividends during September 7, 2016 to October 31, 2017, the due date for transfer of such shares by companies is October 31st 2017.

2. The IEPF Authority has opened demat accounts with National Securities Depository Limited (NSDL) and Central Depository Services Limited (CDSL) through Punjab National Bank and SBICAP Securities Limited respectively, as Depository Participants. The details of said accounts are as under:

Particulars	PNB	SBICAP
DP ID	IN300708	12047200
Client ID	10656671	13676780

3. These demat accounts will have features and functionality to support IEPF operations using paperless, digital processes and facilitate record keeping of shares transferred to the IEPF Authority to meet the requirements of the Rules.

4. All companies which are required to transfer shares to 'EPF Authority under the aforesaid Rules, shall transfer such shares, whether held in dematerialised form or physical form, to the demat accounts of IEPF Authority by way of corporate action. The Information related to the shareholders, whose shares are being transferred to IEPF,s demat accounts with PNB or SBICAP shall be provided by the companies to NSDL or CDSL respectively as per the prescribed format by the concerned depository.

5. The Ministry of Corporate Affairs has held separate discussions with NSDL and CDSL during which they have agreed to

		<p>levy reduced charges for account maintenance and record keeping pertaining to shares transferred to the demat accounts of IEPF Authority. A Memorandum of Understanding (MOU) to the effect is being finalized with the two depositories and the same will also be uploaded on website www.iepf.gov.in on finalization. NSDL and CDSL shall, based on these discussions, separately notify the charges, which shall not be more than those finalized in the MOU NSDL and CDSL are required to allow the services with immediate effect.</p> <p>6. Any cash benefit accruing on account of shares transferred to IEPF such as dividend, proceeds realised on account of delisting of equity shares of the company, amount entitled on behalf of security holder if the company is being wound up as per Rule 6, sub-rule (10), (11) and (12) of Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016, shall be transferred by companies to bank account opened by the Authority with Punjab National Bank, sansad marg, New Delhi, which has been linked to demat accounts mentioned at para 2 above.</p> <p>7. It is clarified that Only amounts mentioned in para 6 above are to be transferred to Bank account indicated above. Transfer of amount due to be transferred under section 125(2) of the Companies Act, 2013 or any other amount to aforesaid account is strictly prohibited.</p> <p>8. 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

- ✚ Where there is no material on record to show that the preference shares were not subscribed by the erstwhile Financial Corporation, and those preference shares were offered as security for the loan availed from it, then the plea of the appellant that those shares were a part of 'Corporate Debt Restructuring' (on transfer of debt by an assignment deed) could not be entertained, and sale of those shares by the Financial Corporation was not impeachable on the basis of material on record, because no provision in the Companies Act, or the Indian Contract Act, prohibit the owner of such preference shares to deal with the same. **Prag Bosimi Synthetics Ltd. vs. 3A Capital Ltd. and Others. MANU/GH/0328/2017**

- ✚ Where the nominee directors do not vote in favour of the petitioner as Managing Director of Joint Venture Company, violating the provisions of the Joint Venture Agreement, that act is an acute act of Oppression, and hence, liable to be corrected by exercising necessary power u/s 241/242 of the Companies Act, 2013. **Vikram Bakshi vs. Connaught Plaza Restaurants Pvt. Ltd. [2017] 140 CLA 142 (NCLT)**

- ✚ Articles of Association of the company, which at best is only a contract between the company and its members, cannot shorten the Time span as mandated by the Statute. **R Ramesh vs. Devi Polymers Pvt. Ltd. MANU/TN/1267/2017**

- ✚ Application to amend petition, complaining of Oppression/Management, cannot be allowed where amendment is sought with regard to a separate cause that had occurred 3 years back and in respect whereof no pleading was made in the original petition. **Aurosagar Estates Pvt. Ltd. vs. M C Davar Holdings Pvt. Ltd. [2017] 140 CLA 133 (NCLAT)**

- ✚ Where the shares are acquired in excess of 5 percent violating the Takeover Regulations and Insider Trading Regulations, the shares so acquired in excess of 5 percent should be offered for buy-back to the company. **IFB Agro Industries Ltd. vs. SICGIL India Ltd. and Others. [2017] 140 CLA 85 (NCLT)**

- ✚ It is true that there is no specific provision in the Act to put a hold on the winding up order after it has been passed, but at the same time, it is equally true that there is no prohibition for the same. It depends on the facts and circumstances of each case and so where the sale of some assets is enough to pay off all the secured and unsecured creditors and the company is still left with surplus assets, it can apply for staying the winding up permanently or for

recall of the winding up order and revival of the company. **Government of Karnataka vs. NGEF Ltd. (In Liquidation) [2017] 140 CLA (Snr.) 119 (Kar.)**

- ✚ Where law is being used to remove the appellant-minority shareholder from the company giving him his value of share, and act of oppression against him has already reduced his shareholding, he is supposed be given prior right to purchase majority shareholding before exit, otherwise it can be considered unfair to him. **Surinder Kumar Viridi vs. Beavers Leather (P.) Ltd. and Others. [2017] 140 CLA 107 (NCLAT)**
- ✚ NCLT dismisses petition filed u/s 397/398 (relating to Oppression and Mismanagement) read with Sec. 111 (relating to Rectification of register of members) of Companies Act, 1956 filed by Petitioner (former director and member of Respondent Co.) against Sri Surya Teja Constructions Pvt. Ltd. (Respondent Co.) and directors/shareholders on the issue relating to satisfaction of eligibility criteria u/s 399 of Companies Act, 1956. NCLT refers to the orders passed by Civil Court and High Court, wherein it was held that if petitioner and his wife ceased to be a director/MD and even as a shareholder, then that petition is not maintainable and is liable to be dismissed without going into further allegations or acts of oppression and mismanagement. NCLT further observes that the Petitioner has filed several cases before other forums/authorities before filing the present Company Petition and holds that Petitioner has not come to the Tribunal with clean hands. **[LSI-1973-NCLT-2017-(HYD)]**

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

- ✚ Moratorium shall only prohibit the action against the properties reflected in the balance sheet of the Corporate Debtor and shall have no application on the properties beyond the ownership of the Corporate Debtor. Consequently, the order of the Court directing the court commissioner to take over the possession shall not fall within the clutches of moratorium. **Schweitzer Systemtek India (P.) Ltd. vs. Phoenix ARC (P.) Ltd. MANU/NC/0795/2017**
- ✚ Even if the Operational Creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application u/s 9(5)(ii)(d) of the Code, if Notice of Dispute has been received by the Operational Creditor

or there is record of dispute in the Information Utility. The Court at this stage does not have to examine the merits of the dispute. **Mobilox Innovations (P.) Ltd. vs. Kirusa Software (P.) Ltd.** MANU/SC/1196/2017

- ✚ Where the requirements of Section 10 of the Code and Rules framed thereunder have been fulfilled, Insolvency Resolution Process can be initiated on application by Corporate Debtor, even when reference to the BIFR stands registered and automatic moratorium under the SICA is in operation in respect of Corporate Debtor. **Incredible Unique Buildcon Ltd. vs. Clutch Auto Ltd.** MANU/NC/0578/2017
- ✚ Where the adjudicating authority has passed order considering the relevant provisions of Sections 10, 14 and 60, which clarifies that separate application relating Insolvency Resolution or Bankruptcy of a personal guarantor is required to be filed before the same Bench of the adjudicating authority, and such application pending before any other court of law or tribunal is required to be transferred to the same Bench, the impugned order which thus, stands in accordance with law, cannot be challenged in appeal with success. **Schweitzer Systemtek India (P.) Ltd. vs. Phoenix ARC (P.) Ltd. and Others.** MANU/NL/0057/2017
- ✚ Where the applicant has invested money in an under construction commercial space of the company and has admittedly neither supplied any goods nor has rendered any services to it as defined u/s 5(21) of the Code, his claim does not fall within the purview of 'Operational Debt' and he cannot acquire the status of an 'Operational Creditor' to initiate Corporate Insolvency Resolution process against the company. **Sanjeev Jain vs. Eternity Infracon (P.) Ltd.** [2017] 140 CLA 80 (NCLT)
- ✚ Objection of Corporate Debtor, that the petition of the financial creditor should be dismissed for non-filing of record of default from Information Utility Centre, is liable to be rejected, firstly as IUCs were not established by the time this petition was filed, and secondly because filing of record of default with the IUC was only optional, if it was available. **Edelweiss Asset Reconstruction Co. Ltd. vs. Bharati Defence & Infrastructure Ltd.** [2017] 140 CLA 53 (NCLT)
- ✚ Since the Insolvency and Bankruptcy Code, 2016 has overriding effect on all other laws in existence, the Corporate Debtor cannot take out an argument that some proceedings are pending before the High Court and so the petition by the financial creditor is liable to be dismissed. **Edelweiss Asset Reconstruction**

Co. Ltd. vs. Bharati Defence & Infrastructure Ltd. [2017] 140 CLA 53 (NCLT)

- ✚ NCLAT allows appeal filed by Centech Engineers Pvt. Ltd. (Corporate Debtor), having observed that Notice issued by Omnicron Sensing Pvt. Ltd. (Operational Creditor) u/s 8 of Insolvency and Bankruptcy Code, 2016 was not in accordance with the provisions of Adjudicating Authority Rules and the Code. It further observed that the Notice u/s 8 of the Code was issued by the Associate of Advocates, and there was neither any evidence of such authorization nor there was any position with or relation to Corporate Debtor. It held that the so-called notice cannot be treated as notice u/s 8 of the Code and thus, sets aside NCLT's order, releases Corporate Debtor from all rigour of law and allows it to function independently through its Board of Directors with immediate effect. [LSI-1971-NCLAT-2017-(NDEL)]

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

CBDT Directive Reg Conduct Of Assessment Proceedings Electronically In Time-Barring Scrutiny Cases

The CBDT has issued Instruction No. 8/2017 dated 29th September 2017 in which it has set out the procedure covering various aspects of conducting scrutiny assessments electronically in cases which are getting barred by limitation during the financial year 2017-2018.

CBDT Clarifies Law Reg TDS On Interest On Deposits Made Under Capital Gains Accounts Scheme, 1988 Where The Depositor Is Deceased

The CBDT has issued Notification No. 08/2017 dated 13th, September, 2017 in which it has explained the law relating to TDS on interest on deposits made under the Capital Gains Accounts Scheme, 1988 where the depositor has deceased.

CBDT Explains Impact Of SARFAESI Act On Collection Of Taxes Out Of Attached Properties

The Directorate of Income Tax (Recovery & TDS) has issued a directive dated 6th September 2017 in which it has explained the salient provisions of the SARFESI Act 2002 and the impact that it has with regard to the right of the department to recover taxes out of attached properties.

CBDT Extends Due Date For Filing ROI And Linking Aadhaar With PAN

The CBDT has issued two Notifications under section 119 of the Income-tax Act, 1961, both dated 31st August 2017 and bearing the same number. Vide one Notification, the CBDT has directed that the due date for filing the return of income and tax audit reports shall be extended from 30th September, 2017 to 31st October, 2017. Vide the other Notification, the CBDT extended the time for linking Aadhaar with PAN till 31.12.2017

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

Case Laws

Domestic Case Laws

[2017] 86 taxmann.com 49 (Delhi)

Where Research and Development expenditure were allowed under section 35(2AB), matter could not be remanded for returning a finding on whether expenditure was of revenue or capital nature because under said section both revenue and capital expenditure are allowable in their entirety

Where Assessing Officer made disallowance under section 14A read with rule 8D in respect of exempt dividend income earned by assessee without recording his satisfaction based on accounts of assessee, disallowance was to be deleted.

86 taxmann.com 137 (SC), Plastiblends India Ltd.

Section 80-IA is a code by itself and contains provision for special deduction which is linked to profits. Section 80-IA not only contains substantive but procedural provisions for computation of special deduction. If assessee's action of claiming section 80-IA deduction without reducing depreciation is accepted, it would allow them to inflate the profits linked incentives provided under section 80-IA which cannot be permitted. Thus, depreciation has to be reduced for computing the profits eligible for deduction under section 80-IA

86 taxmann.com 113 (Himachal Pradesh), Virbhadra Singh (HUF)

Sub-section (1) of section 263 confers sufficient powers upon the Commissioner to decide all issues of law, after recording its satisfaction that the order passed by the Assessing Officer is erroneous and prejudicial to the interest of the revenue. The

power is wide enough to take in its sweep the action of modifying, cancelling or directing fresh assessment, particularly when it is a case of 'no inquiry'.

86 taxmann.com 94 (SC), Balbir Singh Maini

Where for want of permissions, entire transaction of development of land envisaged in JDA fell through, there will be no profit or gain which arises from transfer of a capital asset, which could be brought to tax under section 45 read with section 48.

86 taxmann.com 114 (Ahmedabad - Trib.), Ascendum Solutions India (P.) Ltd

When a disallowance results in an enhancement of business profits but such an enhancement is revenue neutral inasmuch as related business profits, in totality, are eligible for deduction under Chapter VI sec 10A, such appeals need not be pursued.

85 taxmann.com 291 (Delhi), Nokia India (P.) Ltd

There is a distinction between an 'assessment' that is set aside and an 'assessment order' being set aside; when assessment on an issue is set aside and matter is remanded with a direction that issue has to be determined afresh, section 153(2A) would get attracted. Thus, it can not be said that unless entire assessment order is wholly set aside, time limit for passing fresh order under section 153(2A) would not be attracted.

85 taxmann.com 346 (SC), Tata Tea Co. Ltd

When the dividend is declared to be distributed and paid to company's shareholder it is not impressed with character of source of income from which it is paid. Therefore, such dividend is not agricultural income and Parliament could not be said to have transgressed the taxing powers of state to tax agricultural income under Entry 46 of the Seventh Schedule of the Constitution and even if such transgression is there, it is only incidental and therefore, DDT is not unconstitutional.

86 taxmann.com 98 (Bombay), Vijay Vishin Meghani

Where assessee filed appeal before Tribunal with a delay of 2984 days by taking a plea that he was wrongly advised by his Chartered Accountant not to file appeal, in view of fact that assessee produced affidavit of Chartered Accountant in support of his plea and said affidavit was not contested by revenue authorities, Tribunal was not justified in refusing to condone delay in filing appeal.

86 taxmann.com 39 (Gujarat), Genus Electrotech Ltd

When competent authority grants a hearing to assessee and, thereafter, passes a reasoned order transferring assessment, his action would not fail merely because in writing he did not record Principal Commissioners agreement to transfer case.

International Tax Laws

383 ITR 465 (Delhi), Royal Jordanian Airlines

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), KLM Royal Dutch Airlines

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

163 ITD 94 (Ahmedabad - Trib.), Shandong Tiejun Electric Power Engineering Co. Ltd

Section 145, read with section 44BBB, of the Income-tax Act, 1961 read with AS-7 - Method of accounting - Rejection of books of account - Assessment year 2009-10 - Whether in terms of provisions of Companies Act, 1956, AS-7 is applicable to a foreign company which has established place of business in India - Held, yes - Assessee, a foreign company engaged in erection, testing and commissioning of power plants, had project office in India - In impugned year assessee had been executing two projects on fixed price contract basis - It followed Accounting Standard-7, (AS-7), namely 'Construction Contracts' and in pursuance thereto, recognized revenue and expenses by following 'percentage of project completion' method - It duly maintained books of account as per section 44AA(2), got them audited as per provisions of section 44AB and duly offered its taxable income in conformity with provisions of section 44BBB(2) - Assessing Officer rejected assessee's books of account holding that AS-7 was not applicable to assessee and it ought to have followed another method of accounting, i.e., stage of completion of project method - Assessing Officer invoked section 44BBB(1) and determined income at presumptive rate of 10 per cent - Whether since assessee fulfilled all conditions prescribed under section 44BBB(2) and had also followed one of recognized methods prescribed for determination of stage of completion of contract as prescribed in para 29 of Accounting Standard-7, Assessing Officer's action of rejecting books of account in terms of section 145(3) and assessing income under section 44BBB(1) on presumptive basis was not justified particularly when, Assessing Officer's proposition would have led to lesser revenue being recognized during impugned year - Held, yes [Para 6] [In favour of assessee]

80 taxmann.com 178 (Mumbai - Trib.), Atomstroy Export

Where assessee, a Russian company, entered into offshore supply contract with NPCIL for construction of nuclear power plant, since title in goods passed outside India, payments were in foreign currency and deliveries were on 'FOB' basis, no income could be said to accrue or arise in India forming part of business receipts for computation of income under section 44BBB

Transfer Pricing Case Laws

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

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.

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), Haworth (India) (P.) Ltd.

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

85 taxmann.com 311 (Delhi), Avenue Asia Advisors (P.) Ltd.

Where assessee was providing non-binding investment advisory services to its AE under sub-advising agreement, services of assessee could not be termed as that of merchant banker though there might be some overlap in advisory segment of services provided by merchant bankers.

There are several factors which need to be considered before holding that every receivable is an international transaction and it requires an assessment on working capital of assessee.

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