

PKMG LAW CHAMBERS

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

Notification & Circular No.	Date of Issue	Subject
<p>1.Notification from File no.: 01/36/2013-CL.V, MANU/DCAF/0117 /2016</p>	<p>September 9, 2016</p>	<p>Subject: Companies (Mediation and Conciliation) Rules, 2016:</p> <p>These Rules may be called the Companies (Mediation and Conciliation) Rules, 2016 which shall come into force on the date of their publication in the Official Gazette. It includes the provisions regarding Panel of Mediators or Conciliators, Qualifications and Disqualifications for empanelment, Appointment of Mediator or Conciliator, Deletion and withdrawal of name from panel, duty to disclose certain facts, procedure for disposal of matters, representation and attendance of parties, role of mediator and conciliator, time limit for completion of mediation or conciliation, settlement agreement, expenses, ethics and matters not to be referred to mediation and conciliation.</p>
<p>2. Notification No.- A- 45011/14/2016/- Ad-IV MANU/DCAF/0116 /2016</p>	<p>September 9, 2016</p>	<p>Subject: Central Government hereby appoints 9th September 2016 as the date on which the provisions of the below mentioned Act comes into force:</p> <p>In exercise of the powers conferred by section 1(3) of the Companies Act, 2013(18 of 2013) , the Central Government hereby appoints 9th September, 2016 as the date on which the provisions of section 227 [deals with 'Legal advisers and bankers not</p>

		<p>to disclose certain informations’, section 241(1)(b), 242(2)(c), 242(2)(g) [dealing with ‘Powers of Tribunal’], section 246 [deals with ‘Application of certain provisions to proceeding u/s 241 or 245’] and sections 337 to 341 [dealing with ‘Penalty for frauds by officers’, ‘Liability where proper accounts are not kept’, ‘Liability for fraudulent conduct of business’, ‘Power of Tribunal to assess damages against delinquent directors, etc.’, ‘Liability u/s 339 to 340 to extend to partners or directors in firms or companies’ respectively] (to the extent of their applicability for section 246), of the said Act shall come into force.</p>
<p>3. Notification No.- S02866(E)</p>	<p>September 5, 2016</p>	<p>Subject: Central Government hereby appoints 7th September, 2016 as the date on which the below mentioned provisions shall come into force:</p> <p>In exercise of the powers conferred by Section 1(3) of the Companies Act, 2013, the Central Government hereby appoints 7th September, 2016 as the date on which the provisions of Section 124, sub-sections (1) to (4), (6) [dealing with ‘Unpaid Dividend Account’] (with respect to the manner of administration of the IEPF) and Section 125, sub-sections (8) to (11) [dealing with Investor Education and Protection Fund] of the said Act shall come into force.</p>

<p>4. F No. 05/27/2013 -IEPF</p>	<p>September 5, 2016</p>	<p>Subject: Investor Education and Protection Fund Authority (Appointment of Chairperson and Members, holding of meetings and provision for offices and officers) Rules, 2016:</p> <p>The rule shall be inserted in the rules which provides that the authority shall be a body corporate having a perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable and to contract, and shall, by the said name, sue or be sued.</p>
<p>5. RBI/DNBR/2016-2017/46</p>	<p>September 2, 2016</p>	<p>Subject: Non-Banking Financial Company - Account Aggregator (Reserve Bank) Directions, 2016 :</p> <p>The RBI, in exercise of the powers conferred u/s 45JA of the RBI Act, 1934, and of all the powers enabling it in this behalf, hereby issues directions for compliance of the same by every non-banking financial company undertaking the business of Account Aggregator.</p> <p>These directions shall be known as the “Non-Banking Financial Company - Account Aggregator (Reserve Bank) Directions, 2016” which shall come into force with effect from the date of notification, by the Bank in the Official Gazette, of a non-banking financial financial company, under sub-clause(iii) of</p>

		<p>clause(f) of section 45I of the Act. Words or expressions used in these directions but not defined herein but defined in the Act, shall have the same meaning as assigned to them under the Act.</p>
<p>6. Notification No.- S02843(E)</p>	<p>September 1, 2016</p>	<p>Subjects: Central Government hereby designates some Courts as Special Courts for the following purposes:</p> <p>In exercise of the powers conferred by Section 435(1) of the Companies Act, 2013, the Central Government hereby with the concurrence of the Chief Justice of the High Court of Chattisgarh, Rajasthan, Punjab and Haryana, Madras and Manipur, designates the following Courts as Special Courts for the purpose of providing speedy trial of offences punishable with imprisonment of two years or more under the Companies Act, 2013-</p> <ul style="list-style-type: none"> (i) Sessions Judge, Bilaspur (ii) Court of Special Judge, Jaipur (iii) Court of Sessions Judge and 2nd Additional Sessions Judge, S.A.S Nagar (iv) Court of Sessions Judge and 2nd Additional Sessions Judge, Gurgaon (v) Court of Sessions Judge and 2nd Additional Sessions Judge, Chandigarh (vi) I Additional District and Sessions Court, Coimbatore

		(vii) II Additional District and Sessions Court, Puducherry (viii) Sessions Judge, Imphal East
7. Circular No.- RBI/DNBR/2016- 2017/40	August 25, 2016	<p>Subject: Master Direction- Exemptions from provisions of RBI Act, 1934:</p> <p>The Reserve Bank of India, being satisfied that, in public interest, and to enable the Bank to regulate the financial system of the country to its advantage, in exercise of powers conferred by section 45NC of the RBI Act, 1934 and of all the powers enabling it in this behalf exempts the categories of Non-Banking financial companies from certain provisions of the RBI Act, 1934 as under:</p> <p>(i) Exemption from provisions of Chapter IIIB to Housing Finance Institutions and a Non-Banking Institution authorized to operate a payment system,</p> <p>(ii) Exemption from sections 45-IA, 45-IB and 45-IC to Micro Finance Companies, Securitisation and Reconstruction Companies, Nidhi Companies, Mutual Benefit Companies, Chit Companies, Mortgage Guarantee Companies, Merchant Banking companies</p> <p>(iii) Exemption from Section 45-IB & 45-IC to Government companies</p> <p>(iv) Exemption from section 45-IA, 45-IB, 45-IC, 45-MB and 45-MC to Insurance companies, Stock Exchanges, Stock Brokers or Sub</p>

		<p>Brokers</p> <p>(v) Exemption from section 45-IA and 45-IC to Venture Capital Fund Companies</p> <p>(vi) Exemption from Section 45-IA & 45-IA(1)(b) to Core Investment Companies.</p>
<p>8. Circular No.- G.S.R. 791(E) F. No. 01/04/2013-CL-V- Part-II</p>	<p>August 12, 2016</p>	<p>Subject: Companies (Share Capital and Debentures) Fourth Amendment Rules, 2016:</p> <p>In exercise of the powers conferred by section 469(1) and 469(2) of the Companies Act, 2013, the Central Government hereby makes the following rules further to amend the Companies (Share Capital and Debentures) Rules, 2014, namely-</p> <p>(1) These rules may be called the Companies (Share Capital and Debentures) Fourth Amendment Rules, 2016 which shall come into force on the date of their publication in the Official Gazette.</p> <p>(2) In the Companies (Share Capital and Debentures) Rules, 2014, in the rule 18, after Sub-rule (10), the following sub-rule shall be inserted, namely:-</p> <p>“(11)Nothing contained in this rule shall apply to rupee denominated bonds issued exclusively to overseas investors in terms of A.P. (DIR Series) Circular No. 17 dated September 29, 2015 of the Reserve Bank of India.”</p>

Companies Act 1956 and 2013 Case Laws
By Advocate P.K. Mittal, +91-9811044365

- **Competency of Company Court in respect of proceedings which fall within the legitimate domain of RDB Act-** Section 433(e) and 446 of the Companies Act , 1956 read with Recovery of Debts due to Banks and Financial Institutions Act, High Court/Company Court ordered winding up, Official Liquidator in possession of the properties of the company and a recovery certificate is issued by DRT to recovery officer. It was held by the Supreme Court that Jurisdictional Company court is possessed with the determinative authority or competence to entertain a claim raised by bank or financial institution in respect of company in liquidation, and it is not possible to accept that the order passed by company court lacked jurisdictional authority and the order is neither invalid nor void. **Anita International v. Tungabhadra Sugar Works, [2016] 133 CLA 204 (SC)**
- **Section 235 and 237 of the Companies Act, 1956 dealing with the investigation of the affairs of the company-** The Delhi High Court dealt with upon the qualification to main petition u/s 235, which is ten percent of the total voting power. Where the appellant fails to meet the threshold as per section 235 which is ten percent of the total voting power , an investigation into the affairs cannot be directed, and in that case, appeal against order rejecting such application would also be not maintainable. **Amaan Sachdeva v. Fahed Abdulrahman Ali Alkhamiri, [2016] 133 CLA 260 (Del.)**
- **Section 446(1) of Companies Act, 1956 dealing with the proceedings which can have some bearing on the assets of the companies in winding up-** 'Suit' or 'Legal Proceedings' u/s 446(1) can mean only those proceedings which can have a bearing on the assets of the companies in winding up and doesn't mean every civil proceedings or criminal offence where the director is presently liable. The proceedings u/s 138 of The Negotiable Instruments Act, 1881 which are in the nature of criminal complaint and not against the asset of the company cannot be included in the terms 'Suit' or 'Other Legal Proceedings' u/s 446(1). **Indorama Synthetics (I) Ltd. v. State of Maharashtra [2016] 133 CLA 274 (Bom.)**

- **Section 27 of The Contract Act, 1872 deals with Agreement in restraint of trade void-** Every agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind is to that extent void. Exception-One who sells the goodwill of a business may agree with the buyer to refrain from carrying on a similar business therein. The question whether an agreement is void u/s 27 must be decided upon the wording of that section. There is nothing in the wording of section 27 to suggest that the principle stated therein does not apply when the restraint is for limited period only or is confined to a particular area. A contract, which has for its object a restraint of trade, is prima facie, void.

Stellar Information Technology Pvt. Ltd. v. Rakesh Kumar and Ors. MANU/DE/2238/2016.

- **Orders of High Courts u/s 394 where registered offices of the two companies are situated in two different states-** Where registered offices of the two companies are situated in two different states, requiring orders of two High Courts u/s 394, the order of the High Court which sanctions the scheme will be the instrument chargeable to stamp duty in full under the Stamp Act of the State concerned. Where the scheme of amalgamation is sanctioned u/s 394 by the High Court in which the transferee company has its registered office, it is the said sanctioning order which would be an 'instrument' under the Stamp Act of that State on which the full Stamp Duty is chargeable. Where the transferor company which had its registered office in another state subject to the jurisdiction of the High Court in the State and had paid some stamp duty while getting the approval of that High Court, the transferee company cannot claim rebate on duty to be paid in respect of the duty paid by the transferor company in the other State as the order passed by the High Court of the transferee company is not a conditional order subject to passing of some other order. **Chief Controlling Revenue Authority v. Reliance Industries Ltd. [2016] 134 CLA 62 (Bom.)**
- **Section 397 of The Companies Act, 1956 dealing with Oppression-Petition for relief against Company incorporated on principles of quasi-partnership-** Acts of creation of new majority in management which is detrimental to the interest of others in a company incorporated

on the principles of quasi-partnership tantamount to oppression. Creation of a new majority within the management by appointing respondent-directors by the respondents group, and making similar appointments in retaliation by the petitioners accompanied by removal of some directors from directorship , clearly shows that principles of quasi-partnership on which the company was incorporated were not adhered to where the acts of creation of majority in the management is clearly detrimental to the interest of others, this tantamount to oppression. **Khatim K and Another v. Astrix Technologies (P.) Ltd. and Others [2016] 134 CLA 84 (CLB)**

- **Section 391(2) and 394 read with section 2(19A) of Income Tax Act, 1961- Compromise/Arrangement-** For a demerger, a pre-existing undertaking is a must. Where there is no such pre-existing undertaking, but the scheme of demerger is merely a device to avoid capital gains tax and stamp duty, the same cannot be sanctioned. Where the company does not have an operative real estate business or undertaking, which is a pre-requisite for a demerger under the law of the land, the proposed scheme of demerger is a mere device to avoid capital gain tax and stamp duty which would otherwise be leviable in the event of the land of the company being transferred to a third party, and the same cannot be sanctioned u/s 391(2) read with section 394. **In Re:Uma Enterprises (P.) Ltd. [2016] 134 CLA 135 (Raj.)**
- **Section 433(e) of Companies Act, 1956 dealing with Winding up-Inability to pay debts-Bona fide defence-** Where the debt is undisputed, the court will not act upon a defence that the company has the ability to pay the debt but it chooses not to pay. A set off or acounter-claim can be considered as a bonafide defence to a winding up petition if, firstly, the defence is in good faith and one of substance; secondly, the defence is likely to succeed on the point of law; and thirdly, the company adduces prima facie proof on the facts on which the defence depends. Where the debt is undisputed , the court will not act upon a defence that the company has the ability to pay the debt but it chooses not to pay that particular debt. **National Securities Clearing Corporation Ltd. v. Prime Broking Co. (India) Ltd. [2016] 134 CLA (Snr.) 4 (Bom.)**

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

- **CBDT Circular Reg Streamlining Process Of No Objection Certificate (NOC) To Foreign Shipping Companies**

The CBDT has issued Circular No. 30/2016 dated 26th August 2016 by which it has streamlined the process of issue of No Objection Certificate (NOC), voyage return and voyage assessment in the case of foreign shipping companies

- **CBDT Notification Reg Adoption Of Indexed Stamp Duty Value For Income Declaration Scheme**

The CBDT has issued a Notification dated 17th August 2016 by which Rule 3(1)(d) of the Income Declaration Scheme Rules 2016 have been amended to provide that where the acquisition of immovable property by the declarant is evidenced by a deed registered with any authority of a State Government, the fair market value of such property shall, at the option of the declarant, may be taken on the stamp duty value as increased by the same proportion as Cost Inflation Index for the year 2016-17 bears to the Cost Inflation Index for the year in which the property was registered

- **CBDT Issues Further Imp Clarifications On Income Declaration Scheme, 2016**

The Income Declaration Scheme, 2016 came into effect on 1st June, 2016. To address doubts and concerns raised by the stakeholders, the CBDT has issued three sets of FAQs vide Circular Nos. 17, 24, 25 & 27 of 2016. In order to address further queries received from the public relating to the Scheme, the CBDT has issued Circular No. 29 of 2016 dated 18th August 2016

- **CBDT Chief Laments Non-Adherence To Time Limits By AOs In Disposing Public Grievances**

The CBDT Chief has noted that as on date there are 3738 CPGRAMS grievances pending out of which 1073 grievances are overdue i.e. pending beyond the prescribed period of 60 days for disposal. They include 4 grievances which are overdue beyond 1 year, 137 grievances overdue beyond 6 months, 390 grievances which are overdue for a period between three to six months and 542 grievances pending over 2 months to 3 months.

- **CBDT To Consider Waiving S. 234E Fee In Cases Of Genuine Hardship**

The CBDT has addressed a letter dated 2nd August 2016 in which it has stated that it is examining the desirability and expediency of prescribing the situation and circumstances under which the fee levied under section 234E of the Act may cause genuine hardship to the taxpayers so as to prescribe guidelines for waiver of such fees under section 119(2)(a) of the Act. The CBDT has directed the Principal Commissioners of Income-tax to forward suggestions and recommendations in this behalf.

- **CBDT Prescribes Standard Operating Procedure (SOP) For Handling AIR Transactions Without Valid PAN**

The CBDT has vide directive dated 22nd July 2016 prescribed the Standard Operating Procedure (SOP) to be followed by the field staff for handling AIR transactions without valid PAN. The CBDT has also vide letter dated 25th July 2016 revised the template of the letter to be addressed by the field officers while handling reported cases of AIR transactions

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

DOMESTIC TAXATION

➤ **[2016] 73 taxmann.com 2 (Bombay)**

IT : Where assessee had filed return of income and entire amount which was subject to capital gain tax had not been utilized for purpose of construction of new house nor were unutilized amounts deposited in the notified Bank Accounts before filing return of income, Assessing Officer rightly restricted exemption under section 54F proportionately to amount invested.

➤ **[2016] 72 taxmann.com 306 (Kolkata - Trib.)**

IT : Failure to furnish Annual Information Return in time is a technical or venial breach of provision of Act flowing from a bona fide ignorance of assessee; for such failure penalty proceeding need not be initiated

➤ **[2016] 73 taxmann.com 14 (Mumbai - Trib.)**

IT: A call option *simplicitor* in shares is not a "capital asset" because without exercising the option no actual asset is created. However, where call option is for an incredibly large period of 150 years (ie a call option in perpetuity) and the shareholder executes an irrevocable power of attorney in favour of the buyer of option and authorizes him to exercise all the rights of shareholders and undertakes not to transfer the shares except to the option buyer when call option is exercised, the option right is to be reckoned as a transfer/alienation of a valuable right which would be a class of asset in itself distinct from the shares

➤ **[2016] 72 taxmann.com 237 (Jaipur)**

IT : Where assessee was trading into scrap, provisions of section 206C were attracted and assessee was duty bound to collect TCS on sale of scrap

➤ **[2016] 72 taxmann.com 300 (Bombay)**

IT : Section 145A(a) specifically restricts its ambit only to valuation of purchase and sale of goods and inventory and same would not apply to service tax billed on rendering of services as service tax billed has no relation to any goods nor does it have anything to do with bringing goods to a particular location – Thus, if section 145A would have no application in cases where service is provided by assessee

➤ **[2016] 72 taxmann.com 239 (Calcutta)**

IT : Mat Credit under section 115JAA brought forward from earlier years is to be set off against tax on total income including surcharge and education cess instead of adjusting same from tax on total income before charging such surcharge and education cess

➤ **[2016] 72 taxmann.com 318 (Mumbai - Trib.)**

IT : Compensation received by assessee, a member of cooperative housing society from developer, received towards hardship caused to assessee on redevelopment was outside ambit of income under section 2(24) and thus not taxable as a revenue receipt.

➤ **[2016] 72 taxmann.com 149 (SC)**

IT : Where assessee company was having house property and its business was to lease out its property and to earn rent, income so earned as rent should be treated as 'business income', and not as 'income from house property'.

➤ **[2016] 72 taxmann.com 281 (Mumbai - Trib.)**

IT : Where a property was jointly owned by assessee and her husband, but source of funds for investment in purchase of said property was made by assessee's husband and said property was reflected in his Balance Sheet from relevant year till its sale, and STCG arising thereon was also disclosed by assessee's husband in his return of income, said STCG was to be assessed in hands of assessee's husband and not in hands of assessee

➤ **[2016] 72 taxmann.com 116 (Kolkata - Trib.)**

IT : Provision made for liabilities incurred but not reported (IBNR) made by assessee as per regulations framed by Insurance Regulatory Development Authority (IRDA) based on a scientific calculation with a proper rationale are ascertained liabilities.

INTERNATIONAL TAXATION

➤ **[2016] 72 taxmann.com 298 (Delhi - Trib.)**

IT/ILT : Where assessee a US company entered into contract with ONGC for supply of goods and title in goods passed off shore, no part of consideration could be attributed to supply in India and further in absence of dependent agent PE in India, no income from off shore supplies was taxable in India.

➤ **[2016] 72 taxmann.com 360 (AAR - NewDelhi)**

IT/ILT: No capital gain on amalgamation of two foreign entities as shares of amalgamating company do not derive 50% of their value from assets located in India.

➤ **[2016] 73 taxmann.com 17 (AAR - NewDelhi)**

IT/ILT : Where applicant a Singapore based company entered into composite contract for off-shore supply of goods where there was no division in contract on basis of supply and services and payment was not separately linked with services and supply but was to be made on

basis of stages of completion of contract, entire amount received by applicant from contractor was taxable in India.

➤ **[2016] 73 taxmann.com 29 (AAR - NewDelhi)**

IT/ILT : Income of a Singaporean company from installation project in India for more than 183 days held as taxable as it constitutes its PE in India in terms of Article 5 of India-Singapore DTAA.

Tax saving through Mauritius Route:

[2016] 73 taxmann.com 16 (Delhi)

Facts:

- (a) The applicant, a Mauritian company, was wholly owned subsidiary of Shinsei Bank, Japan. It owned shares of Shinsei AMC, India and Shinsei Trustee, India.
- (b) Shinsei AMC and Shinsei Trustee were asset management and trustee-company, respectively, of Shinsei Mutual fund. Shinsei bank was the sponsor and settler of Shinsei Mutual funds.
- (c) Applicant entered into the share purchase agreement with Shinsei Bank and others for sale of entire shareholding in Shinsei AMC and Shinsei trustee.
- (d) The applicant raised following question before AAR:
Whether sale of shares of AMC and trustee-company was taxable in India under India-Mauritius tax treaty?

The AAR held as under:

- (1) The main allegation of the department was that the applicant was introduced in this case as a permitted transferee and the parent company (Shinsei Bank, Japan) held all rights and obligations in respect of transfer.

- (2) As the Shinsei Bank was the existing sponsor and had borne certain responsibility to the regulations, investors of the individual sponsor, it was required to be part of share purchase agreement.
- (3) Here it was very clear that applicant had made investment on its own and Shinsei Bank was only a party to the SPA in its capacity as sponsor to comply with mutual fund regulations. As the applicant was resident of Mauritius and it had produced a valid tax residency certificate, it was not liable to pay any tax on such transaction due to Article 13 of India-Mauritius DTAA.

Editor's Note:

In order to close this favourite Mauritian route, the Indian Govt. has notified protocol to amend provisions of the India-Mauritius DTAA. Now Indian Govt. gets right to tax capital gains arising to Mauritian resident from sale of Indian shares. However, such provisions are applicable only on shares acquired on or after April 1, 2017. Thus, shares acquired on or before March 31, 2017 will not be effected and would remain exempt from tax in India.

Transfer Pricing Case Laws
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➤ **[2014] 45 taxmann.com 102 (Delhi - Trib.)**

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

➤ **[2014] 42 taxmann.com 56 (Mumbai - Trib.)**

IT/ILT : Where DRP failed to consider assessee's contention on issue of adjustment of low capacity utilization, determination of PLI and selection of comparables, matter required fresh adjudication.

➤ **[2013] 35 taxmann.com 579 (Mumbai - Trib.)**

IT/ILT: Penalty under section 271G, for failure to furnish information under section 92D, cannot be imposed unless notice is issued specifying information to be produced by person entering into an international transaction.

➤ **[2013] 35 taxmann.com 341 (Bangalore - Trib.)**

IT/ILT: Where AE of assessee entered into four agreements with Power Grid Corporation of India Limited (PGCIL) and later on it with consent of PGCIL had assigned portion of onshore contract to assessee, assignment agreement between AE and assessee had all ingredients of an international transaction within meaning of section 92B and price paid for such transaction had to pass ALP test

IT/ILT: Where it was highlighted by assessee that there was no opportunity of being heard by TPO before proposing adjustment, issue of determination of ALP was remanded to TPO to afford opportunity to assessee.

Corporate Laws

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Insolvency and Bankruptcy Code, 2016

Subject: Insolvency and Bankruptcy Board of India(Salary, Allowances and other Terms and Conditions of Service of Chairperson and members) Rules, 2016 to get effective

**Notification No.- GSR831(E)
Dated August 29, 2016**

In exercise of the powers conferred in clause (zd) of the sub-section(2) of section 239 read with sub-section (5) of section 189 of the “Insolvency and Bankruptcy Board of India(Salary, Allowances and Other Terms and Conditions of Service of Chairperson and Members) Rules, 2016” of the Code shall come into force.

SARFAESI LAW:

- As per the reasoning stated in the case , before passing the order of winding up, it is required to be noted that on account of the proceedings under the SARFAESI Act, 2002, the companies assets have been in the custody of ARCIL and the same had not been objected to by anyone. Even where the debtor/borrower/mortgagor is a company in liquidation, there is no necessity of associating the Official Liquidator in the sale in exercise of powers by a secured creditor u/s 13(4) of the Act. The sale thus made cannot be held to be bad or illegal. The remedies of the Official Liquidator with respect to such a sale are only before the DRT in accordance with section 17 of the act and not before the Company Court. SARFAESI Act being a latter legislation to the incorporation of section 529A in the Companies Act thus prevails over the Companies Act. **Authorised Officer v. O.L. of Jhagadia Copper and Ors. MANU/GJ/1813/2016**

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

- Where the petitioners filed writ petition challenging various actions taken by the respondent bank under the provisions of SARFAESI Act, the Guj. HC, relying upon a decision by the Hon’ble Apex Court, held that an alternative remedy of appeal to DRT u/s 17 of the SARFAESI Act is available and the Petition stands dismissed. **Jamnadas Vishnubhai Patel and Ors. v. Cosmos Cooperative Bank Ltd. MANU/GJ/1893/2016**

Sick Industrial Companies (Special Provisions) Act, 1985:

- Delhi HC held that the winding up proceedings against the respondent company shall be kept in abeyance u/s 22(1) of SICA since it would be indeed inequitable to give preference to an unsecured creditor over a secured creditor when there are chances of winding up order. It further held that an act of Court should prejudice no one, specially those whose debts have been accorded a higher priority. **Forech India Ltd. v. Tecpro Systems Ltd. MANU/DE/2435/2016**

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

Notification & Circular No.	Date of Issue	Subject
1. DBR No. Leg. BC. 13/09.07.005/2016-17	September 8, 2016	Subject: Income Declaration Scheme, 2016- Acceptance of Cash over the Counter: As the Scheme has come into effect from 1 st June, 2016, it has been brought to notice of the government that banks are hesitant in allowing the deposit of large amounts of cash by the declarants with them, for credit to government account. Through this circular, banks are advised to accept cash from all their customers who desire to deposit cash at the counters and to refrain from incorporating clauses, in terms and conditions, which restricts deposit of cash over counter.
2. Circular No.- SEBI/HO/CFD/DC	September 7, 2016	Subject: Restrictions on Promoters and Whole-Time Directors of Compulsorily

<p>R/CIR/P/2016/81</p>		<p>Delisted Companies pending fulfillment of Exit offers to shareholders:</p> <p>Section 21A of SCRA, 1956 read with Rule 21 of SCRR, 1957 and Chapter V of SEBI Delisting Regulations provides a recognized stock exchange may compulsorily delist the equity shares of a listed company on certain grounds. Regulation 24 of Delisting Regulations- the company which has been compulsorily delisted, its whole-time directors and its promoters are restrained from accessing the securities market.</p> <p>Regulation 23(3)- the promoter shall acquire delisted equity shares from the public shareholders, subject to their option of retaining equity shares by paying them fair value as determined by an independent valuer.</p>
<p>3. Circular No.- SEBI/HO/CDMRD/ DRMP/CIR/P/201 6/79</p>	<p>September 7, 2016</p>	<p>Subject: Guidelines for Due Date Rate(DDR) fixation for Regional Commodity Derivatives Exchanges:</p> <p>This circular is issued in exercise of the powers conferred u/s 11(1) of the SEBI Act, 1992, read with section 10 of the SCRA, 1956 to protect the interest of investors in securities and to promote the development of and regulate the securities market.</p> <p>As per section 131(4) of the Finance Act, 2015, all rules, directions, guidelines, instructions, circulars or any like instruments made by the erstwhile FMC or the Central</p>

		Government applicable to recognized associations under the FCRA, 1952 would continue to remain in force for a period of one year from the date on which FCRA was repealed or till such time as notified by SEBI, whichever is earlier.
4. Circular No.- SEBI/HO/CDMRD/ DMP/CIR/P/2016 /82	September 7, 2016	<p>Subject: Transaction Charges by Commodity Derivatives Exchanges:</p> <p>The Commodity Derivatives Exchanges are collecting transaction charges from the members for the trades executed on their trading platform. In order to promote competition in the market and bring in greater efficiencies and lower transaction costs to market participants, it has been decided that the norms shall be continued to be applicable to the Commodity Derivatives Exchanges while levying transaction charges. The provisions of this circular shall come into effect from September 29, 2016 in supersession of all earlier directives issued by erstwhile FMC with regard to matters related to Transaction Charges. This circular is issued in exercise of powers conferred u/s 11(1) of the SEBI Act, 1992, to protect the interests of investors in securities and to promote the development of and to regulate the securities market.</p>

SEBI Laws
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- **Section 12(1B) of SEBI Act, 1992 dealing with the prohibition of any action of sponsoring or initiating a collective investment scheme after 25th January 1995 without obtaining a certificate of registration from the SEBI Board-** The Supreme Court held that both the classes of persons: non proviso category persons and person covered under proviso category class have to obtain a certificate of registration from the SEBI Board under the regulations before sponsoring, initiating or carrying on any activity in the nature of collective investment scheme after 25th January, 1995. **Securities Exchange Board of India v. Gaurav Varshney and Another [2016] 133 CLA 294 (SC)**
- **Section 15C of the SEBI Act, 1992 dealing with the penalty for non-compliance of the directions issued by the Board within the stipulated time-** The Board held that if any listed company fails to comply with the directions issued by the Board within the stipulated time and fails to redress the investor grievances within the time specified by the Board, then such company shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees. The penalty mentioned above is considered by the Board to be not at all harsh and any appeal against it shall be dismissed. **MFL India Ltd. v. Securities Exchange Board of India MANU/SB/0215/2016**

Civil Laws

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- It was held by the Hon'ble Delhi High Court that a Writ cannot be instituted under Article 226 of the Constitution for re-appreciation of evidence. The Petitioner bank approached the Hon'ble Court seeking of the quashing of the Order passed by the Ld. DRAT upholding the Order passed by Ld. DRT. The Court dismissed the writ holding it infructuous stating that it is a settled law that a writ Court would not re-appreciate evidence and a decision of the specialized Tribunal on a question of fact cannot be questioned only on the plea that the findings of the Tribunal are perverse or that the material evidence has not been excluded or that the finding is based on irrelevant evidence. **Oriental Bank of Commerce and Ors. Vs. Respondent: ICICI Bank Ltd. and Ors. MANU/DE/1835/2016**
- The related issue is that whether the appellant/plaintiff can get benefit of Section [14](#) of the **Limitation Act**, 1963 during the pendency of proceedings before the consumer forum which were filed by the appellant/plaintiff and were dismissed by the Judgment of the Consumer Forum dated 18.8.2004. It is seen in this regard that the complaint before the consumer forum was filed in May, 2002 and was dismissed on 18.8.2004, and therefore, the appellant/plaintiff can at best seek exemption of two years and four months for being added to the limitation period of 3 years, and therefore, the suit for which cause of action arose for recovery of 2000 units on 11.11.1998 could have been at best filed till 31.3.2004, but the suit admittedly was filed only on 20.1.2005, and has therefore been rightly dismissed as barred by limitation. It is therefore clear that the court have rightly dismissed the suit on the ground of limitation and also non-joinder of necessary parties. There is therefore no merit in this second appeal as no substantial question of law arises. **S.C. Jain v. Unit Trust of India and Ors. MANU/DE/2564/2016**
- Section [26](#) falling under Chapter V enjoins on the appropriate Governments and local authorities to provide access to free education in an appropriate environment till every child with disability attains

the age of eighteen years. Similarly, Sections [28 to 31](#) impose several responsibilities on the appropriate Governments for providing various amenities, a specific reference to which is not necessary in the present context. Sections [32 to 41](#) made it obligatory for appropriate Governments to identify the posts in the establishments which can be reserved for persons with disability and undertake various measures to impart training and provide access to information, relevant records in possession of any establishments etc. One needs to note in this context that various provisions are made in favour of persons who already suffered disability, for admission in the schools for the purpose of providing education to them and for securing employment. **Telangana State Road Transport Corporation and Ors. v. P. Ramesh MANU/AP/0367/2016**

Arbitration Laws

By Advocate Praveen K Mittal, +91-9810826436

- The Hon'ble Court while dismissing the petition under Section 34 of the Arbitration Act held that, it is settled law that when it comes to arbitration awards, the court's approach is one of non-interference. The grounds on which an award can be set aside are highly restricted. It was further held that even if an arbitrator has interpreted the agreement erroneously, the same is an error within his jurisdiction and it cannot be interfered with, except in cases where the decision is perverse or so irrational so as to render the award unreasonable on the touchstone of the Wednesbury's principle; that is, that no reasonable person could have possibly arrived at such a conclusion. **National Highways Authority of India Vs. Gayatri - ECI (JV), MANU/DE/2506/2016.**
- If there is slight ambiguity in the Arbitration Clause of the agreement, the same renders the arbitration agreement non-bonding and ineffective. The Court was of the opinion that if the words 'if any' in the arbitration clause meant that 'if any dispute arises' between the parties, the disputes would be mandatorily referred to arbitration. The

case where the word 'if' was in the context of the reference to arbitration, that is to say there was an option of the parties to decide if they wish to refer the matter to arbitration or not, then the arbitration clause becomes non mandatory and non-binding. Thus no appointment of the Arbitrator or settlement of disputes. **Voltas Limited Vs. M.P. Entertainment & Developers Pvt. Ltd. MANU/MH/1831/2016**

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

- It is contended by the learned counsel appearing for the appellants that having regard to the fact that the provisions of PMLA are onerous in nature and any order passed confirming the provisional attachment is likely to result in dispossession of the appellants from the properties attached, it is just and necessary to grant an interim protection by directing that the order, if any, passed by the Adjudicating Authority confirming the provisional attachment shall not be given effect to till the writ petitions are decided. The learned counsel also sought to make various submissions on merits of the case to substantiate the contention that the learned Single Judge committed a grave error in not passing any order on the applications. **Triad Trading Services P. Ltd. and Ors. v. The Hon'ble Adjudicating Authority and Ors. MANU/DE/2398/2016**
- The State holds the government property as a trustee and cannot be privy to its destruction. The illicit felling of trees results in degradation of environment and also loss to the nation wealth. The Court can take judicial notice of recent seismic activities in the State of Himachal Pradesh. The letter and spirit of these enactments cannot be obliterated all together by showing undue indulgence and favouritism to dishonest persons. The over-indulgence by the State to dishonest persons may ultimately lead to anarchy and would also destroy the democratic polity. The principal ingredient of the offence being dishonest misappropriation or conversion which may not ordinarily

be a matter of direct proof, entrustment of property and failure in breach of an obligation to account for the property entrusted, if proved, may in the light of other circumstances, justifiably lead to an inference of dishonest misappropriation or conversion.

State of H.P. v. Rattan Chand MANU/HP/0966/2016

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