

# PKMG LAW CHAMBERS

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**COMPETITION ACT – BY SHRI PRADEEP K MITTAL-  
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- The Delhi High Court has held that the scheme of the Act and the regulations provide an opportunity to the enterprise against whom an information or a reference is received by the Commission to defend itself firstly before the Director General during the course of investigation and then before the Commission during the course of inquiry, if any, conducted by the Commission. *Grasim Industries Ltd Vs. Competition Commission of India* MANU/DE/4658/2013.

**CENTRAL EXCISE –BY SHRI PRADEEP K MITTAL-  
9811044365**

- When the importer, based in India, has imported the goods and sold to first stage dealer and the assessee has bought the goods from the first stage dealer, the invoice issued by the dealer ( registered with the Central Excise Department) is a valid duty paying documents and, therefore, cenvat credit would be admissible. *Jay Ushin Ltd Vs. CCE 2013(298) ELT 728. (Tri-Delhi).*
- The gift items supplied to dealers, distributors and retailers for sale of products and a part of the amount towards advertising expenses, demand of excise duty is not sustainable in the absence of nexus between the gift and goods cleared. *CCE Vs. Grasim Industries Ltd 2013( 298) ELT 739 (Tri-Delhi).*
- In the light of the ratio of *Ujagar Prints*, traders profit cannot form part of the assessable value – similarly, traders loss also cannot result in reduction in assessable value at the hands of job worker. Penalty is not imposable when issue pertains to interpretation of legal dispute. *CCE Vs. Ravi Shankar Industries (P) Ltd 2014(299) ELT 249 (Tri).*
- Where credit on fuel used in generation of power supplied to chemical plant and the products of the chemical has been used by the rayon plant and both the plants are separately registered, yet the cenvat credit on fuel cannot be dis-allowed as both the plants could be treated as one “factory” within the

meaning of Section 2(e) of the Central Excise Act,1944. CCE Vs. Century Rayon 2014( 299) ELT 229 Tri.

- The larger bench of the Tribunal has held that cutting of carpet rolls into smaller sizes and then stitching and shaping the edges into small door mats or for other use, shall not amount to manufacture of floor mats. Win Enterprises Vs. CCE 2014(299) ELT 206 (Tri).
- The order granting stay of duty and penalty in an appeal should rest on two premises (a) that the payment of duty and penalty would cause un due hardship and the undue hardship could be decided on the prima-facie case in favour of the applicant. While hearing the appeal against the stay order declining stay against the pre-deposit, the high court will not re-appreciate the evidence and will not function as a appellate court. CCE Vs. Visaka Industries Ltd 2014( 299) ELT 199 (Madras).
- The Division Bench of the High Court has rejected the contention of the department dis-allowing the Cenat Credit on underground telephone cables used in the factory for the purpose of providing communication within nthe factory between different locations. CCE Vs. India Cements Ltd 2014(299) ELT 176 (Madras DB)
- The adjudicating authority becomes functus officio moment the adjudication original has been passed and he is not competent to issue corrigendum to such adjudication order. The corrigendum can be issued for the purpose of correcting the factual errors. Garden Silk Mills Ltd Vs. CCE 2014(299) ELT 503 (Tri).
- When the goods are sold to industrial/institutional consumers who do not sell the goods to consumers, the provisions of Section 4A of the Central Excise Act, shall not apply – the excise duty shall be payable on the basis of transaction value and not on the basis of MRP basis. India Cements Ltd Vs. CCE 2014(299) ELT 496 (Tri).
- The penalty on employees cannot be imposed unless a strong evidence is filed to show that the employee was instrumental in creating a fake documents. The exact role of the employee need to be spelt out in the Show Cause Notice and proved for the purpose of imposition of penalty on the employee. Parmod Kumar Vs. CCE 2014(299) ELT 483. Tri.

- In case the amount is deposited at the time provisional assessment , it is in the nature of security and not as a duty. The refund is permissible. CCE Vs. Madras Fertilizers Ltd 2014(299) ELT 465 (Tri).

**COMPANIES ACT 1956 - BY SHRI PRADEEP K MITTAL-  
9811044365**

- If the tenant defaults in payments of agreed rent in time, there is no reason as to why winding up petition cannot be filed against such tenant company unless the company has a very strong reasons for not paying rent. Vishu Manglani Vs. Tuff Energy (P) Ltd 2013(202) DLT 556
- Where issues raised in the reply to the company petition are in relation to liabilities of the parties which requires determination, these issues are required to be examined in depth and company court cannot do so in proceedings under Section 433(e) of the Companies Act, 1956. Shubham Construction Vs. MVD Autocomponents (P) Ltd 2013(204) DLT 465.
- It is not legally necessary that the statutory notice under Section 434(1)(a) of the Companies Act, 1956 must be served at the Registered Office of the company – rather it is only necessary that to send notices to registered office of Respondent. When no reply is sent to the statutory notice, it is deemed that the respondent company is unable to pay its debt to the petitioner and should be ordered to be wound up. Grandeur Collection Vs. Shahi Fashions (P) Ltd 2013 (204) DLT 451.
- The Limitation Act does not apply to proceedings pending before CLB, yet if the petitioner approaches CLB after inordinate delay without offering any plausible explanation for such delay, the petition is liable to be dismissed. Where no complicated question of fraud, forgery, mis-representation of documents are not involved, the petition would be maintainable before CLB. Uddhav Manikrao Kender Vs. Ashwarya Process Equipments (P) Ltd 2013 (117) CLA 636.
- The Delhi High Court has held that even if the statutory notice under Section 433(e) has not been served at the Registered

Office of the creditor company due to change of location of its Registered Office, yet the petitioner is entitled to admission of company petition if the petitioner is able to prove in the company petition that there is a failure or neglect to pay debts of the company. Bibby Financial Services India (P) Ltd Vs. Ecotech Apparels (P) Ltd 2013(117) CLA 657 (Delhi).

- The CLB has held that once an ad-interim order is passed, the party has a right to seek modification, variation or recall of the ad-interim order passed by the CLB at a later date upon the documents being laid before the CLB for such variation. Rajan Shivnath Puri vs. Crimpton Yarns (P) Ltd 2013 (117) CLA 667 (CLB).
- Where the civil suit and the earlier petition stood withdrawn and subsequently, the petition under Section 111A of Companies Act, 1956 has been filed, it cannot be said that the petition is barred by res-judicata. Hemsekhar Shah Vs. Tata Steel Limited 2013(117) CLA 294 (CLB).
- In case the transfer of shares is in violation of the provisions of the SEBI or any other law, the petition under Section 111A(3) of the Companies Act, 1956 would be maintainable for rectification of register of member. Merely imposition of penalty and since no further action has been taken by SEBI, does not absolve the party from the consequences arising out of Section 111A of the Companies Act, 1956. Jord Engineers (India) Ltd Vs. 3A Capital Services Ltd 2013( 117) CLA 300 CLB.
- Upon findings being recorded by the CLB that it is a fit case where investigation into the affairs of the company is required to be carried out, the Central Government would be justified in ordering investigation. The company petition cannot be dismissed on the ground of non-joinder or mis-joinder of necessary parties. Red Apple General Trading Fze Vs. Jainbhuvish Power Generation (P) Ltd 2013(117) CLA 316 (CLB).

**ARBITRATION & CONCILIATION ACT, 1996 - BY SHRI PRADEEP K MITTAL-9811044365**

- If an arbitrator has been appointed within 30 days from the date of request being made by other party, the court cannot

intervene, under 11 of Arbitration & Conciliation Act, 1996 for appointment of some other than the named arbitrator. The court shall not make any deviation from the path prescribed under the Agreement unless there are very strong reasons. Reliance Broadcast Network Ltd Vs. Delhi Metro Rail Corporation Ltd 2013(201) DLT 198. DHC.

- In case of Government Contracts or contract entered into by the Public Sector Companies, it cannot be alleged by one party that the arbitrator so nominated, being employee of the that government department or public sector company, shall be biased towards to their own Employer and shall not be fair or equitable. Sheo Murti Shukla Vs. Indian Oil Corporation Ltd 2013(201) DLT 270. Delhi.
- In the absence of occurrence of actual loss, the claimant is not entitled to any damages as claimed. Where the contract contains specific prohibition, nothing additional can be be paid by ignoring the prohibition contained in the Agreement. In case contract does not provide for any formulae for calculating escalation in labour, material etc. due to prolongation of contract, the award is liable to be set aside. If the award is liable to be set aside. If the party has written various letters and none has been replied to, the principle "duty to speak" shall apply and the other party shall run the risk of forfeiting his rights. Delhi Jal Board Vs. Kaveri Infrastructure (P) Ltd 2014(206) DLT 136.
- Where are there are serious allegation of fraud and mal-practice being leveled and required to be tried, in such an event, the arbitrator is not proper person to decide the disputes between the parties and the parties be relegated to the civil court. Satis Vs. Gujarat TeleLinks (P) Ltd 2014(118) CLA (Snr) 1 (Bom DB).

**CORPORATE LAWS - BY SHRI PRADEEP K MITTAL-  
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- In case the BIFR has concluded, after carrying out enquiry, that the Sick Company cannot be rehabilitated, then it cannot be said that the enquiry is still pending before BIFR and the said company shall not be entitled to protection of Section 22 of SICA and the Recovery Officer of DRT shall be entitled to

continue with the recovery proceeding pursuant Recovery Certificate. SH Associates Vs. Rajasthan Financial Corporation Ltd 2013(DLT 519 (Delhi DB)

- The Supreme Court in the case of Integrated Finance Co Ltd Vs. RBI MANU/SC/0710/2013 has observed that " even if no investigation was pending Under Section 235-251 of the Companies Act, it was incumbent on the company to disclose the violations pointed out by the RBI on inspection of its books. In our considered opinion, non-disclosure of the action taken and initiated by the RBI amounted to non-disclosure of material facts which are required to be disclosed Under Section 391 (1) read with Section 391(1) of the Companies Act. The Company Court whilst examining the fairness and the bonafide of a scheme of arrangement does not act as a rubber stamp. It cannot shut its eyes to blatant nondisclosure of material information, which could have a major influence/impact on the decision as to whether the scheme has to be approved or not.
- In case of prosecution under the Foreign Exchange Management Act, if the department has relied upon the statement of certain witness in support of their case, the accused is entitled to cross-examine those persons whose statement has been relied upon by the Department and the Department cannot be heard to say that the accused has no right to cross examine those persons. Shahid Balwa Vs. Directorate of Enforcement. 2013(201) DLT 211 (Delhi).
- In case, the Scheme of Arrangement has been approved by a majority of the shareholders and the creditors, the company court does not have a jurisdiction to act like a appellate authority and the court cannot substitute its own scheme in place of one approved by the shareholders and the creditors. Ram Kohli Vs. Indrama investment (P) Ltd 2013 (115) CLA 209 (Delhi DB).
- In case the Scheme of Arrangement has been sanctioned, it will not prejudice the right of the Income Tax Department to recover Income Tax dues and the Department can recover dues payable either by the Transferor or Transferee in accordance with law. The scheme is liable to be sanctioned even if one unsecured creditor has objected to it. Vodafone Infrastructure Ltd 2013(115) CLA 217 Delhi.

- Where a company is registered with a name which is identical or similar to the one which is already in existence, it shall not necessarily follow that in all cases, the Regional Director shall direct the subsequent incorporated company to change its name. The Regional Director has to consider various aspects of the case. Vov Cosmetics (P) Ltd Vs. Union of India 2013( 115) CLA 239 Bom DB.
- The Supreme Court has held once again that once "summons" have been issued by the Magistrate at the receipt of the complaint and after examination of pre-summoning evidence, he is not entitled to recall the summons on the application being moved by the accused person. If the summons have been issued by a particular magistrate where at least one act out of the five ingredients of Section 138 has been committed, such magistrate has a territorial jurisdiction to try and decide the case. D K Dagala Vs. Dwarkesh Diamonds (P) Ltd 2013 (117) CLA 581 SC.
- The Supreme Court once again affirmed its previous judgment in the case of K Bhaskaran Vs. Sankaran Vidyabalan 1999(7) SCC 510 and has held that a magistrate court of a particular place shall have jurisdiction in case of five event (and not all put together) has occurred at that place i.e. (a) drawing of a cheque (b) presentation of a cheque to that bank (c) returning of cheque unpaid by the drawee bank (d) giving of notice in writing to the drawer of the cheque demanding payment of the cheque amount (e) failure of the drawer to make payment within 15 days of the receipt of the notice. D K Dagala Vs. Dwarkesh Diamonds (P) Ltd 2013 (117) CLA 581 SC.
- The CLB has held that it has widest powers under Section 402 and 403 of the Companies Act, 1956 which include even to order for removal of the Auditor of the company and Section 224(7) of the Companies Act, will not come in the way of order of removal. The Court has also rejected the contention of the Central Government that CLB is only required to give under Section 400 of the Companies Act, 1956 – the CLB has held that requirement is complied once a notice has been given to the Central Government by any person. Union of India vs. CLB 2013(117) CLA 614 (Bombay High court).
- The Court, in a Writ Petition under Article 226 of the Constitution of India, would interfere only when it is a case where there is no material at all or is a case of breach of



principle of natural justice or lack of jurisdiction. The adequacy of material does not fall within the scope of consideration of this Court. Israel Military Industries Ltd Vs. Union of India 2013(201) DLT 1 Delhi.

- In a complaint under Section 138 of NI Act, specific and clear role of each of the directors is required to be spelt out and there should not be any vague and ambiguous averments about the role of each of the Directors of the company. The law requires that the role of each of the directors must be clearly, specifically and unambiguously spelt out failing which, the complaint would be liable to be dismissed. Shyam Narayan Mishra Vs. State 2014(206) DLT 371.
- In a petition under Section 397 of the Companies Act, 1956, on an application under Section 8 of Arbitration & Conciliation Act, 1996, it has been held that there is a arbitration agreement and the petition cannot proceed further, no appeal lies under Section 37 of Arbitration & Conciliation Act, 1996 nor any appeal under Section 10F of the Companies Act, 1956 lies to the Company Court of High Court concerned. Masusmi SA Investment LLC Vs. Keystone Realtors (P) Ltd 2014(118) CLA 184 (Bom).
- The CLB cannot interfere in the day to day management of the company except where the Board of Directors of the Company fail in their duty to comply with the statutory obligations.

**CORPORATE CRIMINAL LAWS - BY SHRI PRADEEP K MITTAL-9811044365**

- When the dispute is purely of civil nature and despite this, one of the party chose to initiate criminal proceedings, such criminal proceedings are liable to be quashed in exercise of powers under Section 482 of the Cr PC . Tamil Nadu Mercantile Bank Ltd Vs. State 2013(IX) SLT 835.
- The Supreme Court has held that it would be unfair if the Appellants are to be tried in such criminal proceedings arising out of alleged breach of a Joint Venture Agreement specially when such disputes have been finally resolved by the Court of competent jurisdiction. Hence, allowing the criminal

proceedings arising out of FIR No. 7 of 2007 to continue would be an abuse of the process of the Court and, therefore, for the ends of justice such proceedings ought to be quashed. Chandran Ratnaswami Vs. K C Palaniswamy MANU/SC/0488/2013.

- The statement of co-accused recorded under Section 108 of Customs act, can be used against the accused also and more particularly, when there is a admission on the part of the co-accused. There must be strong ground for issuance of non-bailable warrant as against the issuance of summons on the very day itself. Praveen Kumar Saraogi Vs. Union of India 2014(299) ELT 151 (All).

**CIVIL LAW - BY SHRI PRAVEEN K MITTAL - 9810826436**

- The Division Bench of Delhi High Court has held that NSE laws have a statutory force and, therefore, if the period for claim has been restricted and the statement of claim has been much beyond the period prescribed under the NSE by-laws, the claim is liable to be dismissed on the ground of limitation alone. Debjyoti Gupta Vs. India Bulls Securities Ltd 2013 (202) DLT 563 Delhi DB.
- The court, while deciding the economic duress, has also to keep in mind whether there was a protest by the victim before or soon after the impugned contract and whether the victim had benefit of independent advice – otherwise the contract cannot be challenged by one party on the ground of economic duress. Sara International Ltd Vs. Rizhao Steel Holding 2013(201) DLT 262.
- In case the immoveable property is located in State of Rajsthan and the plaintiff is seeking declaration in respect of that property, the Delhi Court shall have no jurisdiction to try and decide the case. Priti Pratap Singh Vs. Sariska Palace 2013(201) DLT 178. Delhi.
- If there is a written agreement or contract, then no oral evidence can be led to vary, contradict, alter the terms of the written agreement as per provisions of Section 92 of Indian Evidence Act. No oral evidence can be led to vary terms of

documents. Wealth Estate (P) Ltd Vs. K Chandra & others 2013 (205) DLT 506.

- In a suit for eviction of tenant under the Transfer of Property act (and not rent control laws), the title as a landlord is only relevant and not as a owner. The service of summons in respect of suit filed by the plaintiff/landlord upon the tenant/respondent could itself be treated as a termination of the tenancy and there is no need to file a serve a separate notice of termination of tenancy. If the lease has expired by efflux of time, there is no need to service a separate notice of eviction. Precision Steel Vs. Reeta Salwan 2013(205) DLT 695 Delhi High court.
- If there is a stipulation in the Rent Agreement that after the expiry of term of the rent agreement, a particular amount per day shall be payable by the tenant beyond the agreed period, then that amount shall be treated as a penalty and cannot be recovered unless it is established that the landlord has suffered loss and injury within the meaning of Section 73 and 74 of the Indian Contract Act failing which, only the agreed rent shall be payable. However, in an earlier judgment, the Delhi High Court (Mr Justice Balmiki Mehta) has held that the increase of 15% every year shall be payable by the tenant to the landlord. Sparsh Builders (P) Ltd Vs. Maharishi Ayurveda Products (P) Ltd. 2014 (206) DLT 63.
- In a suit for specific performance in respect of agreement for sale of immovable property, the readiness and willingness would be apparent from the fact of deposit of balance consideration. The fact of deposit of balance consideration demonstrates readiness and willingness. Rakesh Kumar Vs. Kalwati 2014(206) DLT 363.

Your suggestions and contributions are of great importance to us. Please give us your FEEDBACK, so that this Bulletin may be made of real use to you. Please write to us with your views and contributions at: [pkmittal171@yahoo.com](mailto:pkmittal171@yahoo.com) or [pkmittal171@gmail.com](mailto:pkmittal171@gmail.com)

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