# PKMGLAW CHAMBERS

ADVOCATES AND SOLICITORS

## MONTHLY LAW REPORT FOR FEBRUARY,2020

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# REGULATORY UPDATES
# (Notifications/Circulars)

| Notification/Circular | Date | Subject |
|---|---|---|
| **1. Ministry of corporate affairs Notification no. G.S.R 13(E)** | **03-01-2020** | **Companies (appointment and managerial personnel) Amendment Rules 2020.**<br><br>In the notification number G.S.R 13(E), of government of India in the ministry of corporate affairs, dated on 03, January,2020 published in the gazette of India, the central government make amendment in companies (appointment & remuneration of managerial personnel) Rules,2014 shall be applicable from 01, April, 2020.<br>The rule 8A shall be substituted as "every private company which has PSC of RS. 10cr or more shall have whole time CS"<br>After Rule 9(1)(B), the word 'or' shall be inserted and clause (C) shall be inserted as 'every company having outstanding loans or borrowings from banks or public financial institutions of RS.100 crore or more'. |
| **2. Ministry of corporate affairs notification** | **24-01-2020** | **Companies (Winding Up) Rules 2020.**<br><br>In the notification of government of India in the ministry of corporate affairs, dated on 24, January, 2020 to be published in the Gazette of India, extraordinary part II, section |

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| | | 03(I), Central Government hereby make the rules in Companies Act,2013 as Companies (winding up) Rules,2020. |
| **3. Ministry of corporate affairs notification** | **30-01-2020** | **Companies (Accounts) Amendment Rules, 2020.**<br><br>In the notification of government of India in the ministry of corporate affairs, dated on30, January, 2020 to be published in the Gazette of India, extraordinary part II, section 03(I) ,Central Government hereby make the further rules in Companies Act,2013 to amend the Companies (Account) Rules,2014 to be called as Companies (Account) amendment Rules,2020, applicable from the date of publication in Official Gazette.<br>In amended Rules, after rule 12(1), sub-rule 1(A) shall be inserted as 'Every NBFC require to comply with Ind AS shall file financial statement with ROC together with AOC-4 NBFC (Ind AS) and consolidated financial statement, if any with form AOC-4 CFS NBFC (Ind AS). |
| **4. MINISTRY OF CORPORATE AFFAIRS General Circular No.1/2020** | **01-01-2020** | **Relaxation of additional fees and extension of last date of filing of Form no. BEN-2 and BEN-1**<br><br>In continuation to the ministry's circular no. 10/2019 dated 24.09.2019, the Ministry of Corporate Affairs has received further representations regarding extension of last date for filing of e-form BEN-2 without additional fees, which are being examined. |

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| | | 2. Considering such representations and examinations, it is hereby informed that the time limit for filing e-form No. BEN-2 is extended up to 31.03.2020 without payment of additional fees and thereafter fee and additional fee shall be payable. Consequent to such extension of the date of filing e-form No. BEN-2, the date of filing of Form No. BEN-1 may be constructed accordingly.<br>3.This issues with approval of the competent authority. |
| **5. MINISTRY OF CORPORATE AFFAIRS General Circular No.2/2020** | **30-01-2020** | **Relaxation of additional fees and extension of last date of filing of AoC-4 NBFC (Ind AS) and AoC-4 CFS NBFC (Ind AS) for FY 2018-19 under the Companies Act, 2013.**<br><br>It is hereby informed that two new eforms namely AoC-4(Ind AS) and AoC-4 CFS NBFC(Ind AS) are likely to be deployed on 31st January,2020 and 17thFebruary, 2020 respectively.<br><br>2. In view of above, it has been decided to extend the last date for filing of AoC-4 NBFC (Ind AS) and AoC-4 CFS NBFC (Ind AS) for all eligible companies for the FY 2018-19, without payment of additional fee till 31st march, 2020.<br>3. This issues with approval of competent authority. |
| **6. MINISTRY OF CORPORATE** | **31-01-2020** | **Relaxation of additional fees and extension of last date in filing of forms MGT-7 (Annual Return)** |

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| **AFFAIRS General Circular No.3/2020** | | **and AOC-4 (Financial Statement) under the Companies Act, 2013**<br><br>UT of J&K and UT of Ladakh.<br>IN CONTINUATION TO GENERAL CIRCULAR No. 15/2019 dated 28-11-2019 and keeping in view of the requests received from various stakeholders stating that due to disturbances in internet services and the normal work was affected in the UT of J&K and UT of Ladakh and sought extension of time for filing of financial statements for the financial year ended 31.03.2019. Therefore, it has been decided to further extend the due date for filing of e-forms AOC-4, AOC-4(CFS) AOC4 XBRL, and e-form MGT-7 upto31.03.2020, for companies having jurisdiction in the UT of J&K and UT of Ladakh without levy of additional fee.<br><br>2. This issues with the approval of competent authority. |

- **FERANI HOTELS PVT. LTD. (NCLT MUMBAI BENCH) CP No. 3822/441/NCLT/MB/MAH/2018**

The Authority observed The Compounding application was filed before the ROC and the ROC informed that this application was filed because the Company has violated the provisions of Sec. 148(8) of the Companies Act, wherein the Co. fails to give the receipt of cost audit report to the Central Government within 30 days of the date of receipt of the said cost audit report. According to the provision of Sec.148(6) of the Act, a Company shall within 30 days from the date of receipt of a copy of the cost audit report prepared in pursuance of a direction under sub-section (2) furnish the Central Government with such report along with full information and explanation on every reservation or qualification contained therein. As per the provision of Sec.148 (6), the Company was required to furnish a copy of the Audit report on or before 14th April, 2016. however was filed by petitioner after a delay of 155 days. The Bench observed that the Applicant/Defaulters had violated the provision of Sec.148 (6) of the Act and for the said violation the punishment is provided U/s 147 of the Companies Act, 2013. The compounding fee of Rs. 25,000/- by the Company and Rs. 10,000/- each by 3 directors shall be sufficient as a deterrent for not repeating the impugned default in future.

- **EMCO HEALTHCARE PVT. LTD. (the transferor Co.) WITH EMCO MEDITEK PVT. LTD. (the transferee Co.) (NCLT MUMBAI BENCH).**

The Authority held that the sanction of this tribunal is sought U/s 230 to 232 of the Companies Act 2013, to a scheme of amalgamation of EMCO Healthcare Pvt. Ltd. (the transferor Co.) with EMCO Meditek Pvt. Ltd. (the

transferee Co.). The Transferor Co. and the Transferee Co. have approved the scheme of Amalgamation by passing the Board Resolutions which were annexed to the respective Company scheme petitions. The Official Liquidator has filed his report, stating therein that the affairs of the transferor Company have been conducted in a proper manner and that the transferee Company may be ordered to be dissolved. The Adjudicating Authority observed that from the materials on record, the scheme of amalgamation appears to be fair and reasonable and is not violative of any provisions of law and contrary to public policy.

- **TITEC FINANCE LTD. vs. THE STATE OF WEST BENGAL & ORS. (HIGH COURT AT CALCUTTA) C.R.P. 2682 OF 2019.**

The Hon'ble Court observed that where a Company having notice, fails to represent itself in criminal judicial proceedings, the Court must proceed with the trial without splitting the trial in terms of S. 317 (2). The court held that it is a fit case where the corporate veil should be lifted. S.317 (2) prescribes that if the accused is not represented, then the Judge or magistrate may either adjourn such inquiry or trial, or order that the case of the accused be tried separately. The Court further observed that where the non-representation of the Company is deliberate, with an intention to delay the proceedings, the requirement of S. 305 (3) of Cr.P.C. need not be fulfilled and the trial need not be split up in terms of S. 317 (2). To this end, reliance was placed on S. 305 (4) of Cr.P.C. which prescribes that where a representative of a Company does not appear, any requirement referred to under S. 305 (3) shall not apply. "Therefore if a Company refuses to be represented by anyone despite notice, in a trial one can fairly invoke S. 305 (4) of the Code and in such event, a trial need not necessarily be split up in terms of S. 317 (2) of the Code.

- **M/S MARTI INDIA PVT. LTD. (Applicant No.1/Transferor Co.) AND RENESCO INDIA PVT. LTD. (Applicant No.2 /Transferee Co.) (NCLT ALLAHABAD BENCH) CA No. 396/ALD/2018.**

  The Authority observed that Accounting treatment as proposed in the scheme of Amalgamation & Arrangement is in conformity with the accounting standards as prescribed U/s 133 of the Companies Act, 2013. The merger of entities create a strong entity in terms of financial, operational and management efficiencies and shall lead to optimum utilization of resources of Petitioner Co.'s taking advantage of synergies of Petitioners Companies. The Transferee and Transferor Co.'s are subsidiary companies of 'Marti Tunnel AG' & aforesaid holding Co. is holding almost 100% of equity shares of the Transferee Co. and 96% of the Transferor Co. The ROC, Official Liquidator and Regional Director have also submitted their reports wherein they have not raised any objection against the scheme of amalgamation. The Authority observed that after going through the reports of ROC, OL and RD the sanctioning of the present scheme is neither against the public policy nor it would be pre-judicial at large. The Authority further observed that all the statutory compliances have been complied with by the Petitioner Companies. Upon scheme becoming effective, the Authorized share capital of the Transferor Co. shall stand merged with the authorized share capital of the Transferee Co.

- **USHA ANANTHASUBRAMANIAN vs. UNION OF INDIA (SUPREME COURT) Civil Appeal No. 7604 of 2019.**

  The Court observed that S. 339(1) refers to the business of the Company which is being mismanaged and not to the business of another Company or other persons. "This being the case, it is clear that powers under these

sections cannot possible be utilized in order that a person who may be the head of some other organization be roped in, and his or her assets be attached." The Supreme Court granted relief to Usha, former MD & CEO of Punjab National Bank, by setting aside the order passed by NCLT by which her assets were frozen.

- **KIRAN GAKALDAS LAIJAWALA (LAIJA FOOD PVT. LTD) V/S ROC GUJRAT (NCLT) Company. Appeal NO. 214/NCLT/AHM/2019.**

  The Authority observed that the appeal filed u/s 252(3) speaks that company is voluntarily struck off from ROC; rather it on the perusal of the records i.e. STK-5 and STK-7 Company was struck off on the instance of ROC. The authority under such circumstances, the application ought to be filed under section 252(1) of the Companies Act which provide when the company struck off on the instance of ROC. However, while referring to the judgment of Hon'ble Supreme Court in V. Nanthagopal vs Union of India and ors. Wherein, the Hon'ble Supreme Court has observed that "Quoting a wrong provision of law will not disentitle the party to the relief" under such circumstances, the instant appeal being treated u/s 252(1) of Companies Act, 2013.Hence the Appeal stand disposed of accordingly.

## Insolvency and Bankruptcy Code, 2016 Case Studies by Advocate P.K. Mittal +91-9811044365

- **MAHAKALI FUEL PVT. LTD. vs. ETCO DENIM PVT. LTD. (NCLT, MUMBAI BENCH), CP (IB) 126/MB/2019**.

It was observed that Operational Creditor used to supply coal to the Corporate Debtor and raised invoices for the same. The invoices clearly indicate the terms & conditions that (a) goods once sold will not be taken back, (b) 24% interest will be charged if payment is not made on due date and (c) in case of any dispute or discrepancy in quality or quantity regarding the material supplied to be reported within 2 days to office by e-mail otherwise it is presumed that the details mentioned in the tax invoice are accepted to the respondents.It becomes clear from the documents submitted that the Corporate Debtor never raised any dispute with regard to the quality/quantity of the goods. In Ahluwalia Contracts (India) Pvt. Ltd. vs. Raheja Developers Ltd. (NCLAT) it was observed "that in an application u/s9, it is always open to the Corporate Debtor to point out pre-existing dispute. It is to be shown that the dispute was raised prior to the issuance of the demand notice u/s 8(1)". The first and foremost thing we need to look into while dealing with this matter is that whether the dispute raised is a 'bona fide' dispute. In view of the above observations, it can be concluded that it is an admitted liability and that the documents submitted the Operational Creditor are enough to establish the debt upon the Corporate Debtor. Also, they defaulted in repaying the debt the amount of which is more than Rs. 1, 00,000/-. Hence, the petition was admitted.

- **VIJAY KUMAR TODI vs. M/S SIDDHARTH ORGANIZATION LIMITED (NCLT, JAIPUR BENCH) Company Petition No. (IB)-54/9/JPR/2018.**

"Dispute" includes a suit or arbitration proceedings relating to:

(a) The existence of the amount of debt

(b) The quality of goods or service

(c) The breach of a representation or warranty

In the present case, there is no substantive proof that a dispute exists relating to the subject matter of this application. The Corporate Debtor does not have a credible story that is not stumped by contradictions or chinks in the narrative. In the matter of Topsgroup Services Ltd. vs. BLS-IT Services (P) Ltd. in IB-602/ND/2017, (NCLT) held as follow:- "Respondent has taken the stand that there is existence of dispute with respect to the debt & demand in question. There has been no clear communication of dispute to the Applicant about deficiency in services. When there is absolutely no document or particulars to support the claim of existence of dispute, the mere claim of dispute that rose in the reply given belatedly after issue of notice u/s 8 of IBC and in the pleadings can be termed as motivated to evade the liability and thus dismissed." Hence, the above observation support the finding arrived at that the belatedly raised dispute without establishing nexus and relevance cannot be termed as genuine dispute.

- **K.B. POLYCHEM (INDIA) PVT. LTD. vs. KAYGEE SHOETECH PVT. LTD. (NCLAT) Co. Appeal (AT) Insolvency No. 1010 of 2019.**

The Court observed that the notice sent to the Director of the Co., at their residential address, was not returned. Thus, as per the provisions of Clause 26 of the General Clauses Act, 1897 and S.114 of Indian Evidence Act 1872, there will be deemed presumption of service of demand notice issued u/s 8 of IBC, 2016. It was further observed that in the reply of the Corporate Debtor, it is apparent that the Corporate Debtor has not denied the service of demand notice in its reply to the petition. It is apparent that initially, the Corporate Debtor took the plea that demand notice was not as per applicable rules and regulations. The Appellant has given sufficient evidence to show the delivery of demand notice. There is no specific denial of service of demand notice. Thus, the present petition was within the

statutory period of limitation i.e. 3 years, and hence the present appeal was allowed and the impugned order was set aside.

- **MAYANK ARORA & Co. vs. AVANI IMPEX PVT. LTD. (NCLT MUMBAI BENCH) CP (IB) 2829/IBC/MB/2019**

The Authority observed that the demand notice was duly served on the Corporate Debtor which was received by the Corporate Debtor also and there is no reply to the same till date. The Operational Creditor has also submitted the requisite affidavit of No Dispute in terms of S. 9(3) (b) of IBC. The Corporate Debtor has admitted that the services of the Operational Creditor were engaged for providing Accounting and Advisory services. The Authority thus concluded that it is an admitted liability and the documents submitted by the Operational Creditor are enough to establish the debt upon the Corporate Debtor and they defaulted in repaying the debt. Moreover, the amount of debt is also above the minimum required amount of Rs. 1, 00,000/-.

- **RIDHI SIDHI GLASSES (INDIA) PVT. LTD. Vs. INTEGRITY WINDOWS & DOORS PVT. LTD. (NCLT, JAIPUR BENCH) Co. Petition No. (IB)-08/9/JPR/2019.**

it was observed that the dispute prior to filing of this application was w.r.t. 10 pieces of damaged glasses and the same has been claimed by the Applicant to have been settled between the parties by issuance of credit note. It was further observed that the Applicant had initially sent a legal notice in 2016, then after 2 years issued demand notice in 2018 and thereafter in January, 2019 it filed the application under consideration. The time gap between these dates is indicative of doubts or delays on the part

of the Applicant and inherent erraticity. The Authority finally observed that the date of the credit note falls within prescribed period for the purposes of limitation, there is no admission of liability or statement or implication of intention to pay. Thus, a fresh period of limitation cannot start from the date of the credit note. Under the circumstances, the filing of the application on 07.01.2019 beyond the period of 3 years as per A.137 of the Limitation Act, 1963 against the date of default on 28.08.2015 is not maintainable and not sustained. Hence, the application is barred by Limitation and is dismissed.

- **M/s Regal Engineers & Construction (P) Ltd. (AT) VS M/s Endee Shelter Properties Pvt. Ltd. (R) (NCLAT) Company appeal (AT) (Insolvency) No. 300 of 2020.**

It was found that before notice under Section 8 of the I&B Code was sent, there was exchange of notices between the parties and the Respondent had raised dispute regarding the quality of the work done. Only because a consultant had valued the work done did not prohibit the Corporate Debtor to raise question as to the quality of work that was expected and what was done. NCLAT can't enter into settling the dispute whether or not the quality of work was good or not. As there was pre exiting dispute which cannot be said to be moon shine the application under Section 9 was rightly rejected by the Adjudicating Authority.

- **Anubhav Anil Kumar Agarwal Appellant Vs Om Prakash Rohra (R1) M/S. AA Estate Private Limited (R2)(NCLAT) Company Appeal (AT) (Insolvency) No. 1455 of 2019.**

The Authority held that no disciplinary proceedings were initiated against R1/ Applicant/ Financial Creditor. Even the 'absenteeism of the R1 cannot be construed as a dispute' pertaining to the salary arrears claimed in the application by the R1. In respect of interest claimed amounting to Rs.1,83,420/- by the R1, this Appellate Tribunal is of the earnest opinion that the IRP is to take into account of the same at the time of considering/ collating the claim. That the Adjudicating Authority was of the view that, the R1 salary was not credited from the month of December 2018 till date and that Form16 was not issued to him since Financial Year 2014-15 and R1 was Deputy General Manager – Contracts and was employed on a permanent full-time basis working with the Corporate Debtor from 02.03.2009. It is held that the disputes projected by the Corporate Debtor or the Appellant are only moonshine and they are only feeble assertion of facts and the same do not require any further examination such contentions/ pleas in the considered opinion of this Appellate Tribunal do not fall within the parameters of 'dispute' under Section 5(6) of the I&B Code.

- **MAHARASHTRA STATE LOAD DISPATCH CENTER (MSLDC) VS SRI CITY PVT. LTD. & ORS.-NCLAT.**

NCLAT held , with the view of judgment in the matter of Essar Steel India Limited and provisions of Section 238 of IBC, the Resolution Plan cannot be found fault where COC in its wisdom accepted the Plan which terminated the long time agreement. The plan made provision that the Bulk Power Transmission Agreement with Maharashtra State Electricity Transmission Company Limited–Corporate Debtor shall be terminated without any obligation, liabilities or penalties, to or on the Corporate Debtor or the Resolution Applicant. We do not find any fault on this count.

- **Gautam Sinha versus U. V Asset Reconstruction Company Limited and Ors.Company Appeal (AT) (Ins) No.1382 of 2019 NCLAT**

It is observed that the Auditor stated in its own opinion and according to the information and explanations given that the Company has not defaulted in the repayment of loan or borrowings to the financial institution. It is further recorded the statement of fact that bank has declared the Corporate Debtor NPA and proceedings are pending before DRT. This cannot be read as Acknowledgement.The Appellant Authority referred the Judgments of "Sheetal Fabrics" and "Padam Tea" which show that the Balance Sheet would be required to be read with Directors' Report. In the Directors Report which is before us, it does not appear to be any acknowledgement of debt. It is held that default dated 31.12.2013 which was declared NPA on 30th March, 2014, was time barred for the purpose of filing of Application under Section 7 of IBC on 31st October, 2018.

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