

PKMGLAW CHAMBERS

ADVOCATES AND SOLICITORS

MONTHLY LAW REPORT FOR OCTOBER, 2019

ADVISOR



Mr. PRADEEP KUMAR MITTAL
B.Com, LL.B., FCS, Advocate
Past Central Council Member
The Institute of Company Secretaries of India
E-mail: pkmittal171@gmail.com
Web site: www.pkmgcorporatelaws.com
: 9811044365, 7678694882

HONORARY ADVISOR

Dr. SANJEEV KUMAR
M.Com. LL.B., PhD, PGDPIRL, AICWA, FCS
FORMERLY EXECUTIVE DIRECTOR – BAJAJ HINDUSTHAN LIMITED

ASSISTED BY

SHRUTI CHOUDHARY
B.Com (H); LL.B.
TANYA GOEL
B.A. LL.B.

REGULATORY UPDATES
(Notifications/Circulars)

Notification/Circular	Date	Subject
1. MINISTRY OF CORPORATE AFFAIRS General Circular No. 10/2019 Dated 24.09.2019	24th September, 2019	<p><u>Relaxation of additional fees and extension of last date of filing of Form BEN-2 and BEN-1 under the Companies Act, 2013.</u></p> <p>The Ministry of Corporate Affairs has received representations regarding extension of the last date or filing of e-Form BEN-2 without additional fees on account of certain new aspects which require further examination and clarification.</p> <p>The matter has been examined and it is hereby, informed that the time limit for filing e-form No. BEN-2 is extended upto 31.12.2019 without payment of additional fee and thereafter, fee and additional fee shall be payable. Consequent to the extension in the date of filing of e-Form BEN-2, the date of filing of Form BEN-1 may be construed accordingly.</p>
2. MINISTRY OF CORPORATE AFFAIRS Vide	5th September, 2019	<p><u>National Financing Reporting Authority (Amendment) Rules, 2019.</u></p>

**notification
dated
05.09.2019**

- In the National Financial Reporting Authority Rules, 2018 (hereinafter referred to as the said rules), in clause (g) of sub-rule (1) of rule 2, after the words “a division”, the words, “including the one headed by the chairperson or a full-time member”, shall be inserted.
- In the said rules, after clause (c) of sub-rule (1) of rule 3, the following explanation shall be inserted,
namely:-
“Explanation.- For the purpose of this clause, “banking company” includes ‘corresponding new bank’ as defined in clause (d) of section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) and clause (b) of section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980) and ‘subsidiary bank’ as defined in clause (k) of section 2

		<p>of the State Bank of India (Subsidiary Bank) Act, 1959 (38 of 1959).</p> <ul style="list-style-type: none">• In the said rules, in rule 5, for the figures, letters and words “30th April every year in such form as may be specified by the Central Government”, the figures, letters and words “30th November every year in Form NFRA-2” shall be substituted.• In the said rules, in sub-rule (5) of rule 11, the following provisos shall be inserted, namely:- “Provided that where the disposal does not take place within the said period, the Division shall record the reasons for not disposing off the show-cause notice within the said period, and the chairperson, may, after taking into account the reasons so recorded, extend the aforesaid period by such additional period not exceeding ninety days as he may consider necessary:
--	--	--

		<p>Provided further that the chairperson may, if he thinks fit, grant the said extension of period more than once.”</p> <ul style="list-style-type: none"> • In the said rules, in the Annexure, after Form NFRA-1, Form NFRA-2 shall be inserted.
--	--	---

Companies Act, 2013 Case Studies

By Advocate P.K Mittal, +91-9811044365

- ✚ NCLAT observed that During proceeding under Section 230 of companies act,2013, if any objection is raised, it is open to the Adjudicating Authority (National Company Law Tribunal) to pass order under Section 230 to overrule the objections, if the arrangement and scheme is beneficial for revival of the 'Corporate Debtor'(Company). **Rajnish Gupta vs. Small Industries Development, Bank of India and Ors. Company Appeal (AT) (Insolvency) No. 628 of 2019**

- ✚ NCLAT held that NCLT is empowered to restore the name of the Company and all other persons in their respective position for the purpose of initiation of 'Corporate Insolvency Resolution Process' under Sections 7 and 9 of the I&B or workman within twenty years from the date the name of the Company is struck off under sub-section (5) of Section 248 of the Companies Act, 2013. **Elektrans Shipping Pte. Ltd. vs. Pierre D'Silva and Ors. Company Appeal (AT) (Insolvency) No. 754 of 2019**

- ✚ Supreme Court allowed the Civil Appeal and disposed of the Writ Petition (Civil) No. 455 of 2019 by holding that the Winding up Petition filed on 21st October , 2016 being beyond the period of three-years mentioned in Article 137 of the Limitation Act is time-barred, and cannot therefore be proceeded with any further. Accordingly, the impugned judgment of the NCLAT and the judgment of the NCLT were set aside. **Jignesh Shah and Ors. Vs. Union of India (UOI) and Ors. [W.P. (C) No. 645 OF 2019]**

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

- ✚ NCLAT observed that there is no bar for the 'Promoter' to file 'resolution application', even if otherwise not eligible in terms of Section 29A of the I&B code. The NCLAT also stated that a 'resolution plan' cannot be rejected on the ground that the Corporate debtor is not a going concern, if the resolution applicant can show the feasibility to run the company in future. **Sreeram E. Techno School Pvt. Ltd. vs. Beans and More Hospitality Pvt. Ltd. (11.09.2019 - NCLAT): MANU/NL/0442/2019**
- ✚ The Supreme Court clarified that the Limitation Act, 1963 is applicable to Insolvency and Bankruptcy Code, 2016. The petition was filed after more than 3 years of the date on which the cause of action arose therefore it was barred by limitation. **B.K. Educational Services (P) Ltd. v. Parag Gupta and Associates [2018 SCC Online SC 1921]**
- ✚ The NCLT held that as per Regulation 12(2) of IBC, the claims which is to be submitted within 90 days from the commencement of CIRP is only directory. Claims received after 90 days can also be looked into as the said regulation is directory in nature. The applicant can be permitted to file his claim before RP and the delay in filing the same can be condoned. **Omer Bin Jung vs. Madhusudhan Rao Gonuguntla (Dated 08.07.2019): MANU/NC/2987/2019**
- ✚ The NCLT while accepting the application filed by the Financial Creditor U/s 7 of IBC Code held that any amount raised from an allottee under a real estate project is deemed to be an amount having the commercial effect of a borrowing and thus, is covered by the definition of "Financial Debt" under the code. The home buyers can initiate CIRP against defaulting builder or developer as Financial Creditor in terms of S. (5) (8) (f) of the Code w.e.f. 06.06.2018. Thereby, after amendment of the Act, the allottees of the real estate project have been treated as "Financial Creditor". **Rachna Singh and Ors. vs. Umang Realtech Pvt. Ltd. (Dated 20.08.2019) : MANU/NC/3054/2019**

BY: PRADEEP K. MITTAL

DISCLAIMERS

All reasonable care has been exercised in compilation of information in this report. However, the PKMG Law Chambers, its members on panel(s) or advisors or employees shall not in any way be responsible for the consequences of any action taken on the basis of reliance upon the contents.

This report has been sent to you upon your being a client or associate of the PKMG Law Chambers or on the recommendation/suggestion of any of our client or associates. **This is not a spam mail.**

CIRCULATION BY

THIS REPORT IS CIRCULATED
FOR PKMG LAW CHAMBERS,
171, CHITRA VIHAR, DELHI-110092,
PHONES: (011) 22540549
E-MAIL : pkmittal171@gmail.com
Web-Site: www.pkmgcorporatelaws.com