

# **PKMG**LAW CHAMBERS

**ADVOCATES AND SOLICITORS**

**MONTHLY LAW REPORT FOR SEPTEMBER, 2019**

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## REGULATORY UPDATES (Notifications/Circulars)

Notification/Circular	Date	Subject	
<b>1.MINISTRY OF CORPORATE AFFAIRS</b> <b>Notification No. G.S.R.527(E)</b>	<b>05 AUGUST 2019</b>	<b><u>Companies (Registration Offices and Fees) Rules, 2014</u></b> 1. (1) These rules may be called the Companies (Registration Offices and Fees) Fourth Amendment Rules, 2019. (2) They shall come into force on the date of their publication in the Official Gazette. 2. In the Companies (Registration Offices and Fees) Rules, 2014, in the Annexure, for item VII, the following item shall be substituted, namely:- “VII. FEE FOR FILING e- Form DIR-3 KYC or DIR-3 KYC-WEB under rule 12A of the Companies (Appointment and Qualification of Directors) Rules, 2014.	
		(i) Subject to serial number (iii) below, fee payable till the 30 <sup>th</sup> September of every financial year in respect of e-form DIR-3 KYC or DIR-3 KYC- WEB through web service, as the case may be, for the immediate previous financial year.	----
		(ii) Fee payable (in delayed case).	Rs. 5000
		(iii) Fee payable if the individual failed to file e-form DIR-3 KYC or DIR-3 KYC-WEB through web service, as the case may be, for the immediate previous financial year (in delayed case).	Rs. 5000
<b>1.MINISTRY OF CORPORATE AFFAIRS</b> <b>Notification No. G.S.R. 528 (E)</b>	<b>25 AUGUST 2019</b>	<b><u>Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2019.</u></b> 1. (1) These rules may be called the Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2019.  (2) They shall come into force on the date of their publication in the Official Gazette. 2. In the Companies (Appointment and	

		<p>Qualification of Directors) Rules, 2014 (hereinafter referred to as the said rules), in rule 11, in sub-rule (2) and sub-rule (3), after the letters, words and figure “e-form DIR-3-KYC” the words, letters and figures “or the web service DIR-3-KYC-WEB” as the case may be” shall be inserted.</p> <p>3. In the said rules, in rule 12A,-</p> <p>(i) for the words “who has been allotted”, the words “who holds” shall be substituted;</p> <p>(ii) for the words, letters and figures “submit e-form DIR-3-KYC to the Central Government on or before 30th June of immediate next financial year”, the words, letters and figures “submit e-form DIR-3-KYC for the said financial year to the Central Government on or before 30th September of immediate next financial year” shall be substituted;</p> <p>(iii) after the proviso, the following provisos shall be inserted, namely:-</p> <p>“Provided further that where an individual who has already submitted e-form DIR-3 KYC in relation to any previous financial year, submits web-form DIR-3 KYC-WEB through the web service in relation to any subsequent financial year it shall be deemed to be compliance of the provisions of this rule for the said financial year: Provided also that in case an individual desires to update his personal mobile number or the e-mail address, as the case may be, he shall update the same by submitting e-form DIR-3 KYC only: Provided also that fee for filing e-form DIR-3 KYC or web-form DIR-3 KYC-WEB through the web service, as the case may be, shall be payable as provided in Companies (Registration Offices and Fees) Rules, 2014.”.</p>
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<p><b>1.MINISTRY OF CORPORATE AFFAIRS Notification No. G.S.R. 574(E)</b></p>	<p><b>16 AUGUST, 2019</b></p>	<p><b><u>Companies (Share Capital and Debentures) Amendment Rules, 2019.</u></b></p> <p>1. The Central Government amended Companies (Share Capital and Debentures) Amendment Rules, 2019 (hereinafter called as ‘Principal Rules’) in following terms:</p> <p>2. In Rule 4 in sub-rule (1), -</p> <p>(i) for clause (c), the following clause shall be substituted, namely:-</p> <p>“(c) the voting power in respect of shares with differential rights of the company shall not exceed seventy four per cent. of total voting power including voting power in respect of equity shares with differential rights issued at any point of time;” ;</p> <p>(ii) clause (d) shall be omitted.</p> <p>3. In the principal rules, in rule 5, in sub-rule (3), in the Explanation, occurring at both the places, for the word “director”, the words “director or company secretary” shall be substituted.</p> <p>4. In the principal rules, in rule 12, in sub-rule (1), in proviso to Explanation, –</p> <p>(i) for the letters, figures, brackets and words “G.S.R. 180(E), dated 17th February, 2016 issued by the Department of Industrial Policy and Promotion” the letters, figures, brackets and words ”G.S.R. 127(E), dated 19th February, 2019 issued by the Department for Promotion of Industry and Internal Trade” shall be substituted. ;</p> <p>(ii) for the words “five years”, the words “ten years” shall be substituted.</p> <p>5. In the principal rules, in rule 18, for sub-rule (7), the following sub-rule shall be substituted, namely: -</p> <p>“(7) The company shall comply with the requirements with regard to Debenture Redemption Reserve (DRR) and investment or deposit of sum in respect of debentures maturing during the year ending on the 31st day of March of next year, in accordance with the conditions given below:-</p> <p>(a) Debenture Redemption Reserve shall be created out of profits of the company available for payment of dividend;</p> <p>(b) the limits with respect to adequacy of Debenture Redemption Reserve and investment or deposits, as the case may be, shall be as under;-</p>
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		<p>(i) Debenture Redemption Reserve is not required for debentures issued by All India Financial Institutions regulated by Reserve Bank of India and Banking Companies for both public as well as privately placed debentures;</p> <p>(ii) For other Financial Institutions within the meaning of clause (72) of section 2 of the Companies Act, 2013, Debenture Redemption Reserve shall be as applicable to Non –Banking Finance Companies registered with Reserve Bank of India.</p> <p>(iii) For listed companies (other than All India Financial Institutions and Banking Companies as specified in sub-clause (i)), Debenture Redemption Reserve is not required in the following cases –</p> <p>(A) in case of public issue of debentures –</p> <p>A. for NBFCs registered with Reserve Bank of India under section 45-IA of the RBI Act, 1934 and for Housing Finance Companies registered with National Housing Bank;</p> <p>B. for other listed companies;</p> <p>(B) in case of privately placed debentures, for companies specified in sub-items A and B.</p> <p>(iv) for unlisted companies, (other than All India Financial Institutions and Banking Companies as specified in sub-clause (i)) –</p> <p>(A) for NBFCs registered with RBI under section 45-IA of the Reserve Bank of India Act, 1934 and for Housing Finance Companies registered with National Housing Bank, Debenture Redemption Reserve is not required in case of privately placed debentures.</p> <p>(B) for other unlisted companies, the adequacy of Debenture Redemption Reserve shall be ten percent. of the value of the outstanding debentures;</p> <p>(v) In case a company is covered in item (A) or item (B) of sub-clause (iii) of clause (b) or item (B) of sub-clause (iv) of clause (b), it shall on or before the 30th day of April in each year, in respect of debentures issued by a company covered in item (A) or item (B) of subclause (iii) of clause (b) or item (B) of sub-clause (iv) of clause (b), invest or deposit, as the case may be, a sum which shall not be less than fifteen per cent., of the amount of its debentures maturing during</p>
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		<p>the year, ending on the 31st day of March of the next year in any one or more methods of investments or deposits as provided in sub-clause (vi):</p> <p>Provided that the amount remaining invested or deposited, as the case may be, shall not at any time fall below fifteen percent. of the amount of the debentures maturing during the year ending on 31st day of March of that year.</p> <p>(vi) for the purpose of sub-clause (v), the methods of deposits or investments, as the case may be, are as follows:—</p> <p>(A) in deposits with any scheduled bank, free from any charge or lien;</p> <p>(B) in unencumbered securities of the Central Government or any State Government;</p> <p>(C) in unencumbered securities mentioned in sub-clause (a) to (d) and (ee) of section 20 of the Indian Trusts Act, 1882;</p> <p>(D) in unencumbered bonds issued by any other company which is notified under sub-clause (f) of section 20 of the Indian Trusts Act, 1882:</p> <p>Provided that the amount invested or deposited as above shall not be used for any purpose other than for redemption of debentures maturing during the year referred above.</p> <p>(c) in case of partly convertible debentures, Debenture Redemption Reserve shall be created in respect of non-convertible portion of debenture issue in accordance with this sub-rule.</p> <p>(d) the amount credited to Debenture Redemption Reserve shall not be utilized by the company except for the purpose of redemption of debentures.“</p>
<p><b>2. MINISTRY OF CORPORATE AFFAIRS</b>  <b>Notification No. G.S.R. 632(E)</b></p>	<p><b>27 AUGUST, 2019</b></p>	<p><b><u>Amendment to Notification No. G.S.R.729(E) dated 21<sup>st</sup> September 2015</u></b></p> <p>In exercise of the powers conferred by section 469 read with section 414 of the Companies Act, 2013 (18 of 2013), the Central Government hereby amends the notification of the Ministry of Corporate Affairs number G.S.R 729 (E), dated the 21 st September, 2015, namely:—</p> <p>2. In the said notification, in rule 3, -</p> <p>(i) in sub-rule (1), the following provisos shall be inserted, namely:-</p> <p>“Provided that the pay of a serving or retired Chief Justice of a High Court on his joining as</p>

		<p>President, National Company Law Tribunal shall be fixed at the level of pay which he was drawing at the time of demitting his previous office: Provided further that the above proviso shall not affect any other entitlement corresponding to the pay of the President as provided in this sub-rule”;</p> <p>(ii) in sub-rule (2), the following provisos shall be inserted, namely:-</p> <p>“Provided that the pay of a serving or retired government officer or Chairman, Vice-chairman, President, Vice-president, Presiding officer, Member of a Tribunal, Appellate Tribunal or an authority, or a judge of a High Court, who is or has been drawing higher pay, on their joining as Member, National Company Law Tribunal shall be fixed at the level of pay which they were drawing at the time of demitting their previous employment, subject to a limit of Rs 80,000: Provided further that the above proviso shall not affect any other entitlement corresponding to the pay of a Member as provided in this sub-rule”.</p>
<p><b>3. MINISTRY OF CORPORATE AFFAIRS VIDE NOTIFICATION DATED 28.08.19</b></p>	<p><b>28 AUGUST, 2019</b></p>	<p><b><u>Companies (Incorporation) Seventh Amendment Rules, 2019.</u></b></p> <p>In exercise of the powers conferred by sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (f 8 of 2013), the Central Government hereby makes the following rules further to amend the companies (incorporation) Rules, 2014, namely: -</p> <p>1. Short title and commencement.-</p> <p>(1) These rules may be called the Companies (Incorporation) Seventh Amendment Rules, 2019.</p> <p>(2) They shall come into force from the date of publication in the Official Gazette.</p> <p>2. In the companies (Incorporation) Rules, 2014 (herein after referred to as the said rules), in the annexure to the said rules, for forms RD-1 and RD GNL5, following forms shall be substituted,</p>
<p><b>4. MINISTRY OF CORPORATE GENERAL CIRCULAR NO. 09/2019</b></p>	<p><b>21 AUGUST, 2019</b></p>	<p><b><u>Clarification under section 232(6)</u></b></p> <p>1. Several queries have been received in the Ministry with respect to interpretation of the provision of section 232(6) of the Companies Act, 2013 (Act). Clarification has been sought on whether it is mandatory to indicate a specific calendar date as 'appointed date' in the schemes referred to in the section. Further, requests have</p>

		<p>also been received to confirm whether the 'acquisition date' for the purpose of Ind-AS 103 (Business combinations) would be the 'appointed date' referred to in section 232(6).</p> <p>2. The matter has been examined in detail in the Ministry in the light of the provisions of the Act, applicable rules, prevalent practices and orders passed by Courts/NCLT. It is noted that companies have been filing schemes under sections 230-232 of the Act indicating 'appointed date' either as a specific calendar date or an event based date, as may have been mutually agreed upon by the parties to the scheme. Section 232(5) also requires that every company in relation to which the order is made shall file a certified copy of the order with the Registrar of Companies for registration within 30 days of the receipt of certified copy of the order'</p> <p>3. In <i>Marshall Sons &amp; Co. India Ltd. v. ITO</i> 12231TR 8091, it was held by the Hon'ble Supreme Court that every scheme of amalgamation has to necessarily provide a date with effect from which the amalgamation/transfer shall take place, and that such date may precede the date of sanctioning of the scheme by the Court, the date of filing of certified copies of the orders of the Court before the Registrar of Companies, and the date of allotment of shares, etc. It was observed therein that, the scheme, however, would be given effect from the transfer date (appointed date) itself.</p> <p>4. In another case, in the matter of amalgamation of Equitas Housing Finance Limited and Equitas Micro Finance Limited with Equitas Finance Limited in C.P.Nos.19 to 121 of 2016, the Hon'ble Madras High Court held that the provisions of section 394 (1) of the Companies Act, 1956 (corresponding to section 232 of the Companies Act, 2013) provided enough leeway to a company to delay the date on which the scheme of amalgamation shall take effect and tie the same to the occurrence of an event. Thus, the Court rejected the argument that the 'appointed date' in the scheme should necessarily be a specific calendar date.</p> <p>5. Section 232(6) of the Act states that the scheme shall be deemed to be effective from the</p>
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		<p>'appointed date' and not a date subsequent to the 'appointed date'. This is an enabling provision to allow the companies to decide and agree upon an 'appointed date' from which the scheme shall come into force.</p> <p>6. In view of the above, it is hereby clarified that:</p> <p>a) The provision of section 232(6) of the Act enables the companies in question to choose and state in the scheme an 'appointed date'. This date may be a specific calendar date or may be tied to the occurrence of an event such as grant of license by a competent authority or fulfillment of any preconditions agreed upon by the parties, or meeting any other requirement as agreed upon between the parties, etc., which are relevant to the scheme.</p> <p>b) The 'appointed date' identified under the scheme shall also be deemed to be the 'acquisition date' and date of transfer of control for the purpose of conforming to accounting standards (including Ind-AS 103 Business Combinations;</p> <p>c) where the 'appointed date' is chosen as a specific calendar date, it may precede the date of filing of the application for scheme of merger/amalgamation in NCLT. However, if the 'appointed date' is significantly ante-dated beyond a year from the date of filing, the justification for the same would have to be specifically brought out in the scheme and it should not be against public interest.</p> <p>d) The scheme may identify the 'appointed date' based on the occurrence of a trigger event which is key to the proposed scheme and agreed upon by the parties to the scheme. This event would have to be indicated in the scheme itself upon occurrence of which the scheme would become effective. However in case of such event based date being a date subsequent to the date of filing the order with the Registrar under section 232(5), the company shall file an intimation of the same with the Registrar within 30 days of such scheme coming into force.</p>
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## **Companies Act, 2013 Case Studies**

**By Advocate P.K Mittal, +91-9811044365**

- ❖ **NCLAT** in the matter of **Pr. Commissioner of Income Tax, Delhi – 6 v. Registrar of Companies, Delhi & Anr. Company Appeal (AT) No. 405 of 2018** upheld the decision of Adjudicating Authority, whereby the Adjudicating Authority dismissed the appeal filed by the appellant against strike off order passed by the Registrar of Delhi taking into consideration the fact that no demand for tax was in place at the time of striking off the Company and one of the erstwhile Directors namely Mr. Hem Prakash Sharma undertook to settle the tax demand as may be raised by the Revenue in relation to the Company.
  
- ❖ **NCLAT** in the matter of **Alovera Tradelink Pvt. Limited v. Ostwal Physchem (India) Limited Company Appeal (AT) No. 178 of 2019** set aside the decision of Adjudicating Authority, whereby the Adjudicating Authority directed the transferee and transferor to convene a meeting of equity shareholders on the ground that consent letters of equity shareholders specifying no objection is not a sufficient compliance, individual consent affidavits has not been filed and hence meeting of equity shareholders shall be convened. The Appellate Authority while setting aside the impugned order held that consent letters filed by the companies specifying no objection is sufficient compliance.
  
- ❖ **NCLAT** in the matter of **Kozihikode Coconut Farmers Producer Company Ltd. v. & Anr. Moolath Mannil Sreenivasan & Anr. Company Appeal (AT) No. 341 of 2018** held that Producer Companies are governed by Part IX-A of Companies Act, 1956, which is still in force and hence matters pertaining to fraud, misfeasance and misconduct against management, shall be governed by the provisions of the said Part and not by the provisions of Companies Act, 2013. The Appellate Tribunal further held that Companies Act, 1956 provides that disputes against or with Producer Company shall be decided by Arbitrator whose decision shall be final and such matters shall not come

within the ambit of Section 241-242 (Oppression and Mismanagement) of Companies Act, 2013.

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

- ❖ NCLAT on 27.08.2019 in the matter of **Praxis Corporate Services Pvt. Ltd. v. Powai Cubicles Pvt. Ltd. [Company Appeal (AT) (Insolvency) No. 456 of 2019]** held that where Demand Notice was issued on 01.03.2018 dispute raised on 6th April, 2018 cannot be relied on to state that there is existence of bona fide prior dispute.
- ❖ Hon'ble Supreme Court of India in **Civil Appeal No. 10710 of 2018 in the matter of Babulal Vardharji Gurjar v. Veer Gurjar Aliminium Industries (P.) Ltd. and Anr.** held that even though the grounds articulated in the appeal memo was vague, the objection regarding limitation goes to the root of the matter and touches upon the jurisdiction of National Company Law Appellate Tribunal to proceed with the claim of the respondent. In view of the decision of the Supreme Court in **B K Educational Services (P.) Ltd. v. Parag Gupta & Associates [2018] CLA 380** holding that limitation is applicable even to application filed under section 7, it would be just and necessary to answer the objection appropriately in accordance with law by the Appellate Tribunal.
- ❖ NCLAT in the matter of **Superna Dhawan and Anr. v. Bharti Defence & Infrastructure Ltd. and Ors. In Company Appeal (AT) (Insolvency) No. 195 of 2019** held that the resolution plan should be planned for insolvency resolution of the corporate debtor as a going concern and not for addition of value with intent to sell the corporate debtor. The purpose to take up the company with intent to sell the corporate debtor is against the basic object of the code.

- ❖ NCLAT in the matter of **Concept Management Consulting Ltd. v. Anand Chandra Swain and Anr. Company Appeal (AT) (Insolvency) No. 392-393 of 2019** held that where the appellant has not filed any application for claim under sub-section (5) of Section 60, against the decision of interim resolution professional that he had not admitted the claim, he cannot raise claim at the stage of liquidation.

**BY: PRADEEP K. MITTAL**

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