

PKMG LAW CHAMBERS

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MONTHLY LAW REPORT FOR AUGUST,2019

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REGULATORY UPDATES (Notifications/Circulars)

Notification/Circular	Date	Subject
1. MINISTRY OF CORPORATE AFFAIRS Notification No. G.S.R. 467(E)	01 JULY, 2019	<p><u>Nidhi (Amendment) Rules, 2019</u></p> <p>In the Nidhi rules, 2014 (hereinafter referred to as “said rules”), in rule 2, after clause (c), the following clause shall be inserted, namely:- “(d) every company declared as Nidhi or Mutual Benefit Society under sub-section (1) of section 406 of the Act”.</p> <p>3. In the said rules, in rule 3, after clause (d), the following clause shall be inserted, namely:- ‘(da) “Nidhi” means a company which has been incorporated as a Nidhi with the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit, and which complies with the rules made by the Central Government for regulation of such class of companies.’</p> <p>4. In the said rules, after rule 3, the following rule shall be inserted, namely:- “3A. Declaration of Nidhis .— The Central Government, on receipt of application (in Form NDH-4 along with fee thereon) of a public company for declaring it as Nidhi and on being satisfied that the company meets the requirements under these rules, shall notify the company as a Nidhi in the Official Gazette: Provided that a Nidhi incorporated under the Act on or after the commencement of the Nidhi (Amendment) Rules, 2019 shall file Form NDH-4 within sixty days from the date of expiry of:- (a) one year from the date of its incorporation; or (b) the period up to which extension of time has been granted by the Regional Director under sub-rule (3) of rule 5 Provided further that nothing in the first proviso</p>

		<p>shall prevent a Nidhi from filing Form NDH-4 before the period referred therein:</p> <p>Provided also that that in case a company does not comply with the requirements of this rule, it shall not be allowed to file Form No. SH-7 (Notice to Registrar of any alteration of share capital) and Form PAS-3 (Return of Allotment).”</p>
<p>2. MINISTRY OF CORPORATE AFFAIRS Notification No. G.S.R. 466(E)</p>	<p>01, JULY, 2019</p>	<p><u>Companies (Significant Beneficial Owners) second Amendment Rules, 2019.</u></p> <p>In exercise of the powers conferred by sub-sections (1) and (2) of section 469 read with section 90 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Significant Beneficial Owners) Rules, 2018, namely:-</p> <p>1. (1) These rules may be called the Companies (Significant Beneficial Owners) second Amendment Rules, 2019.</p> <p>(2) They shall come into force on the date of their publication in the Official Gazette.</p>
<p>3. MINISTRY OF CORPORATE AFFAIRS General Circular No.08/2019</p>	<p>29 JULY, 2019</p>	<p><u>Relaxation of additional fees and extension of last date of filing of . Form BEN-2 under the Companies Act, 2013</u></p> <p>The Ministry of Corporate Affairs has received several representations regarding extension of the last date for filing of e-Form No.BEN-2 without additional fees on account of Companies (Significant Beneficial Owners) Second Amendment Rules, 2019 notified vide G.S.R. No. ,M6 (E) dated 01..07.2019. The matter has been examined and it is hereby, informed that the time limit for filing e-form No.BEN-2 is extended upto 30.09.2019 without payment of additional fee and thereafter fee and</p>

		additional fee shall be payable.									
4. MINISTRY OF CORPORATE AFFAIRS Notification No. S.O. 2269 (E)	01 JULY, 2019	<u>Enforcement date of Section 81 notified</u> In exercise of the powers conferred by sub-section (2) of section 1 of the Companies (Amendment) Act, 2017 (1 of 2018), the Central Government hereby appoints the 15 August, 2019 as the date on which the provisions of section 81 of the said Act shall come into force.									
5. MINISTRY OF CORPORATE AFFAIRS Notification No. S.O. 2564 (E)	17 JULY, 2019	<u>Special Court designated</u> In exercise of the powers conferred by sub-section (1) of section 435 of the Companies Act, 2013 (18 of 2013), the Central Government, with the concurrence of the Chief Justice of the High Court, Bombay, hereby designates the following Court mentioned in column (2) of the Table below as Special Court for the purposes of providing speedy trial of offences punishable with imprisonment of two years or more under the said Act, namely:- <p style="text-align: center;">TABLE</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th>S. No.</th> <th>Court</th> <th>Jurisdiction as Special Court</th> </tr> <tr> <th>(1)</th> <th>(2)</th> <th>(3)</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>Court of District Judge-1 and Additional Sessions Judge, Pune</td> <td>State of Maharashtra.</td> </tr> </tbody> </table>	S. No.	Court	Jurisdiction as Special Court	(1)	(2)	(3)	1.	Court of District Judge-1 and Additional Sessions Judge, Pune	State of Maharashtra.
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(1)	(2)	(3)									
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Companies Act, 2013 Case Studies

By Advocate P.K Mittal, +91-9811044365

- ✚ Recently NCLAT held that where the name of the company was struck off for not filing statutory balance sheets and annual reports for the last 10 years with the Registrar of Companies, but certain disputes relating to properties of the company were pending in the High Court, the NCLAT, looking to disputes pending in the High Court held that it would be appropriate to restore the name of the company to the leaving all questions open for the appellant and the respondents to dispute in writ petition for final adjudication by the High Court. [**Lakshmirattan Cotton Mills Co. Ltd. V. Union of India and Anr. MANU/NL/0035/2019**]
- ✚ High Court of Calcutta held that, where the plaintiff states that the plaintiff is intending to file an application before the NCLT, when the truth was that the application has already been filed, it is a case of misrepresentation, and amounts to suppression of material facts. On this count itself, the application for injunction needs to be dismissed. [**Vikram Jairath v. Middleton Hotels (P.) Ltd. MANU/WB/0524/2019**]
- ✚ In the matter of **Vijay Chhibber And Ors. V. Delhi Gymkhana Club Ltd. Cs(Os) 510/2018** the Hon'ble High Court of Delhi held that Section 241 of the Companies Act, 2013 entitles a member of a company who complains that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company, to apply to the NCLT. Thus the remedy for the grievance of mismanagement and oppression would be before the NCLT.

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

- ✚ While approving the resolution plan the Adjudicating Authority (NCLT) directed that all proceedings in the matter, whether civil or criminal, present or future, shall stand withdrawn and dismissed. NCLAT while setting aside this direction of NCLT held that “the Adjudicating Authority has no jurisdiction to pass any order with regard to any matter pending before the court of Criminal jurisdiction.” [**Prasad Gempex v. Star Agro Marine Exports Pvt. Ltd. & Anr. Dated 02.05.2019 MANU/NL/0196/2019**]
- ✚ The Adjudicating Authority by impugned order dated 4th February, 2019 rejected the impleadment application filed by the appellant. While dismissing the appeal NCLAT held that “except the corporate debtor no other party has right to intervene at the stage of admission of petition under Section 7 or 9. However, an aggrieved party may prefer an appeal if the order of admission affects the person.” [**Damont Developers Pvt. Ltd. V. Bank of Baroda & Anr. Dated 24.04.2019 MANU/NL/0162/2019**]
- ✚ The Supreme Court of India in case of **M/S. B. Himmatlal Agrawal V. Competition Commission Of India & Anr. Civil Appellate Jurisdiction Civil Appeal No. 5029 OF 2018** held that The Appellate Tribunal, which is the creature of a statute, has to act within the domain prescribed by the law/statutory provision. This provision nowhere stipulates that the Appellate Tribunal can direct the appellant to deposit a certain amount as a condition precedent for hearing the appeal. In fact, that was not even done in the instant case. It is stated at the cost of repetition that the condition of deposit of 10% of the penalty was imposed insofar as stay of penalty order passed by the CCI is concerned. Therefore, at the most, stay could have been vacated. The

Appellate Tribunal, thus, had no jurisdiction to dismiss the appeal.

✚ The Supreme Court of India in case of **K. Sashidhar v. Indian Overseas Bank & Ors. Civil Appeal No.10673 OF 2018** held that the jurisdiction bestowed upon the appellate authority (NCLAT) is expressly circumscribed. It can examine the challenge only in relation to grounds specified in Section 61(3) of I&B Code, which is limited to matters “other than” enquiry into the autonomy or commercial wisdom of the dissenting financial creditors. Thus, the prescribed authority (NCLAT) have been endowed with limited jurisdiction as specified in the I&B Code and not act as a court of equity or exercise plenary powers.

BY: PRADEEP K. MITTAL

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