

PKMG_{LAW} CHAMBERS

ADVOCATES AND SOLICITORS

MONTHLY LAW REPORT FOR NOVEMBER, 2019

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REGULATORY UPDATES
(Notifications/Circulars)

Notification/Circular	Date	Subject
<p>1. MINISTRY OF CORPORATE AFFAIRS NOTIFICATION</p>	<p>11.10.2019</p>	<p>In exercise of the powers conferred by sections 173, 177, 178 and section 186 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Meetings of Board and its Powers) Rules, 2014, namely:-</p> <p>(1) (I) These rules may be called the Companies (Meetings of Board and its Powers) Amendment Rules, 2019.</p> <p>(ii) They shall come into force on the date of their publication in the Official Gazette.</p> <p>2. In the Companies (Meetings of Board and its Powers) Rules, 2014, in rule 11, in sub-rule (2), for the words "business of financing of companies", the words "business of financing industrial enterprises" shall be substituted.</p>
<p>2. MINISTRY OF CORPORATE AFFAIRS Vide NOTIFICATION G.S.R. 792(E)</p>	<p>15.10.2019</p>	<p><u>Amendment in the Companies (cost records and audit) Rules, 2014</u></p> <p>In exercise of the powers conferred by sub-sections (1) and (2) of section 469 and section 148 of the Companies Act, 2013 (18 of 2013) (hereinafter referred as the Act), the Central Government hereby makes the following rules further to amend the Companies (cost records and audit) Rules, 2014, namely:-</p> <ul style="list-style-type: none"> • These rules may be called the Companies (cost records and audit)

		<p>Amendment Rules, 2019.</p> <ul style="list-style-type: none"> • These rules shall be deemed to come into force on the 1st day of April, 2018. • The companies who have already filed their Cost Audit Report in form CRA-4 for the financial year 2018-19 with the Central Government before the publication of this notification are not required to file their Cost Audit Report for the said financial year. <p>2. In the Companies (cost records and audit) Rules, 2014, in the Annexure,-</p> <p>(a) in Form CRA-1,-</p> <p>(i) In paragraph 7. Overheads, for sub-paragraphs (m), (q), (r) and (s), the following sub-paragraphs shall respectively be substituted, namely:-</p> <p>“(m) Overheads shall be classified according to functions, viz., works, administration, selling and distribution. Works overheads, also known as Production Overheads, Operation Overheads, Factory Overheads or Manufacturing Overheads, shall be the indirect costs involved in the production of a product or in providing service. Administrative overheads shall be the aggregate of cost of resources consumed in activities relating to</p>
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		<p>general management and administration of an organization. Selling and Distribution overheads shall be the aggregate of cost of resources consumed in the selling and distribution activities of the organization.”</p> <p>“(q) In case of leased assets, if the lease is an operating lease, the entire rentals shall be included in the respective overheads. If the lease is a financial lease, the finance cost portion shall be segregated and treated as part of finance costs.”</p> <p>“(r) Selling and Distribution Overheads, the benefits of which are expected to be derived over a long period, shall be amortized on a rational basis.”</p> <p>“(s) Any demurrage or detention charges or penalty levied by the transportation or other authorities in respect of distribution activity shall not form part of Selling and Distribution Overheads.”</p>
<p>3. MINISTRY OF CORPORATE AFFAIRS Vide NOTIFICATION G.S.R.793(E)</p>	<p>16.10.2019</p>	<p><u>Amendment in the Companies (Incorporation) Rules, 2014</u></p> <p>1. Short title and Commencement. - (1) These rules may be called the Companies (Incorporation) Eighth Amendment Rules, 2019. (2) They shall come into force from the date of publication in the Official Gazette.</p> <p>2. In the Companies (Incorporation)</p>

		<p>Rules, 2014 (herein after referred to as the said rules), I. in rule 8A, in sub-rule(1), in clause (b), the words and figure “or applicant for registration,”, shall be omitted.</p> <p>II. in rule 25A,-</p> <p>“(iii) DIR-12 (changes in Director except in case of: (a) cessation of any director or</p> <p>(b) Appointment of directors in such company where the total number of directors are less than the minimum number provided in clause (a) of sub-section (1) of section 149 on account of disqualification of all or any of the director under section 164.</p> <p>(c) Appointment of any director in such company where DINs of all or any its director(s) have been deactivated.</p> <p>(d) Appointment of director(s) for implementation of the order passed by the Court or Tribunal or Appellate Tribunal under the provisions of this Act or under the Insolvency and Bankruptcy Code, 2016).”</p>
<p>4. MINISTRY OF CORPORATE AFFAIRS NOTIFICATION G.S.R. 804(E)</p>	<p>22.10.2019</p>	<p><u>Amendment in the Companies (Appointment and Qualification of Directors) Rules, 2014</u></p> <p>In exercise of the powers conferred by</p>

		<p>section 149 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Appointment and Qualification of Directors) Rules, 2014, namely:-</p> <p>1. (A) These rules may be called the Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019.</p> <p>(B) They shall come into force with effect from the 1st day of December, 2019.</p> <p>2. In the Companies (Appointment and Qualification of Directors) Rules, 2014 (hereinafter referred to as the principal rules), for rule 6, the following rule shall be substituted, namely: –</p> <p>“6. Compliances required by a person eligible and willing to be appointed as an independent director.— (1) Every individual – (a) who has been appointed as an independent director in a company, on the date of commencement of the Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019, shall within a period of three months from such commencement; or</p> <p style="padding-left: 40px;">(b) who intends to get appointed as an independent director in a company after such commencement, shall before such appointment,</p> <p>apply online to the institute for inclusion of</p>
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		<p>his name in the data bank for a period of one year or five years or for his life-time, and from time to time take steps as specified in sub-rule (2), till he continues to hold the office of an independent director in any company:</p> <p>Provided that any individual, including an individual not having DIN, may voluntarily apply to the institute for inclusion of his name in the data bank.</p> <p>(2) Every individual whose name has been so included in the data bank shall file an application for renewal for a further period of one year or five years or for his life-time, within a period of thirty days from the date of expiry of the period upto which the name of the individual was applied for inclusion in the data bank, failing which, the name of such individual shall stand removed from the data bank of the institute:</p> <p>Provided that no application for renewal shall be filed by an individual who has paid life-time fees for inclusion of his name in the data bank.</p> <p>(3) Every independent director shall submit a declaration of compliance of sub-rule (1) and sub-rule (2) to the Board, each time he submits the declaration required under sub-section (7) of section 149 of the Act.</p> <p>(4) Every individual whose name is so included in the data bank under sub-rule (1) shall pass an online proficiency self-</p>
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		<p>assessment test conducted by the institute within a period of one year from the date of inclusion of his name in the data bank, failing which, his name shall stand removed from the databank of the institute: Provided that the individual who has served for a period of not less than ten years as on the date of inclusion of his name in the databank as director or key managerial personnel in a listed public company or in an unlisted public company having a paid-up share capital of rupees ten crore or more shall not be required to pass the online proficiency self-assessment test: Provided further that for the purpose of calculation of the period of ten years referred to in the first proviso, any period during which an individual was acting as a director or as a key managerial personnel in two or more companies at the same time shall be counted only once.</p>
<p>5. MINISTRY OF CORPORATE AFFAIRS NOTIFICATION G.S.R. 805 (E)</p>	<p>22.10.2019</p>	<p><u>Companies (Creation and Maintenance of Databank of Independent Directors) Rules, 2019</u></p> <p>1. Short Title and Commencement.— (1) These rules may be called the Companies (Creation and Maintenance of databank of Independent Directors) Rules, 2019.</p> <p>(2) The provisions of these rules, other than rule 2 and 5, shall come into force with effect from the 1st day of December, 2019.</p> <p>(3) The provisions of rule 2 and 5 shall</p>

come into force on the date of publication of this notification in the Official Gazette.

2. Creation and maintenance of data bank.—

(1) The institute shall create and maintain a databank of persons willing and eligible to be appointed as independent directors, and such databank shall be an online databank which shall be placed on the website of the institute.

(2) The data bank referred to in sub-rule (1) shall contain the following details in respect of each person included in the data bank to be eligible and willing to be appointed as independent director—

- ❖ DIN (Director Identification Number), if applicable;
- ❖ Income Tax PAN;
- ❖ the name and surname in full;
- ❖ the father's name;
- ❖ the date of Birth;
- ❖ gender;
- ❖ the nationality;
- ❖ the occupation;
- ❖ full Address with PIN Code (present and permanent);
- ❖ phone number;
- ❖ e-mail id;
- ❖ the educational and professional qualifications;
- ❖ experience or expertise, if any;
- ❖ any pending criminal proceedings as specified in clause (d) of sub-section (1) of section 164;

		<p>❖ the list of limited liability partnerships in which he is or was a designated partner along with—</p> <p>(I)the name of the limited liability partnership; (ii) the nature of industry; and (iii) the duration- with dates;</p> <p>(3) The information available in the data bank shall be provided only to companies required to appoint independent director after paying a reasonable fees to the institute.</p> <p>(4) A person whose name is included in the data bank, may restrict his personal information to the institute, to be disclosed in the data bank.</p> <p>(5) Any individual whose name appears in the data bank shall make changes in his particulars within thirty days of such change through web based framework made available by the institute for this purpose.</p> <p>(6) A disclaimer shall be conspicuously displayed on the website hosting the data bank that a company must carry out its own due diligence before appointment of any person as an independent director.</p> <p>3. Duties of the institute.— (1) The institute shall comply with the following, in respect of individuals referred to in subrule (1) of rule 6 of the Companies (Appointment and Qualification of Directors) Rules, 2014 , namely</p> <p>(a) conduct an online proficiency self-</p>
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		<p>assessment test covering companies law, securities law, basic accountancy, and such other areas relevant to the functioning of an individual acting as an independent director;</p> <p>(b) prepare a basic study material, online lessons, including audio-visuals for easy reference of individuals taking the online proficiency self-assessment test;</p> <p>(c) provide an option for individuals to take advanced tests in the areas specified in clause (a) and prepare the necessary advanced study material in this respect:</p> <p>(2) The institute shall daily, share with the Central Government, a cumulative list of all individuals— (a) whose names have been included in the data bank along with the date of inclusion and their Income Tax PAN or Passport number in case of foreign director (not required to have Income-Tax PAN);</p> <p>(b) whose applications for inclusion in the data bank have been rejected along with grounds and the dates of such rejection; and</p> <p>(c) whose names have been removed from the data bank along with grounds and the dates of such removal.</p>
<p>6. MINISTRY OF CORPORATE AFFAIRS NOTIFICATION G.S.R. 803 (E)</p>	<p>22.10.2019</p>	<p><u>Amendment in the Companies (Accounts) Rules, 2014</u></p> <p>1. (A) These rules may be called the Companies (Accounts) Amendment Rules, 2019.</p>

		<p>(B) They shall come into force with effect from the 1st day of December, 2019.</p> <p>2. In the Companies (Accounts) Rules, 2014, in rule 8, in sub-rule (5), after clause (iii), the following clause shall be inserted namely:—</p> <p>“(iia) a statement regarding opinion of the Board with regard to integrity, expertise and experience (including the proficiency) of the independent directors appointed during the year”.</p> <p>Explanation.—For the purposes of this clause, the expression “proficiency” means the proficiency of the independent director as ascertained from the online proficiency self-assessment test conducted by the institute notified under sub-section (1) of section 150.</p>
7. MINISTRY OF CORPORATE AFFAIRS VIDE GENERAL CIRCULAR NO. 11/2019	25.10.2019	<p><u>Relaxation of Additional Fee and Extension Of Last of Filing Form.</u></p> <p>Vide this circular seeking extension of time for filing form IEPF-1A and IEPF-2, it was decided to relax the additional fee payable by companies on filing form IEPF-1A upto 31.12.2019 and for filing form IEPF-2 upto 30.11.2019. after expiry of due date the additional fee shall be payable.</p>
8. MINISTRIES OF CORPORATE AFFAIRS VIDE GENERAL CIRCULAR NO. 13/2019	29.10.2019	<p><u>Relaxation of additional fee AOC-4 and MGT-7</u></p> <p>Vide this circular the extension of time for filing of financial statements for the financial year ended 31.03.2019 on account of various factors. It has been decided to extend the due date for filing of e-forms AOC-4, AOC-4 (CFS) AOC-4 XBRL upto 30.11.2019 and e-form MGT-7 upto 31.12, 2019’ by companies without</p>

		levy of additional fee.
9. MINISTRY OF CORPORATE AFFAIRS VIDE NOTIFICATION NO. S.O. 3705(E).	14.10.2019	<p><u>Notification for Delegation of powers to Tribunal -Section 458 read with section 418 of the Companies Act 2013</u></p> <p>In exercise of the powers conferred by sub-section (1) of section 458 of the Companies Act, 2013 (18 of 2013), the Central Government hereby delegates its powers and functions under sub-section (1) of section 418 of the said Act (hereinafter referred to as the said sub-section) to provide officers and other employees to the Tribunal and the Appellate Tribunal referred to in the said sub-section to the President and Chairperson of the said Tribunal and the Appellate Tribunal, as the case may be, subject to conditions as specified in the recruitment rules of the respective posts as approved and notified by the Central Government.</p>
0. MINISTRY OF CORPORATE AFFAIRS VIDE NOTIFICATION NO. S.O. 3791(E).	22.10.2019	<p><u>Data Bank Notification Relating to IICA</u></p> <p>In exercise of the powers conferred by sub-section (1) of section 150 of the Companies Act, 2013 (18 of 2013), the Central Government hereby notifies the Indian Institute of Corporate Affairs at Manesar (Haryana), as an institute to create and maintain a data bank containing names, addresses and qualifications of persons who are eligible and willing to act as independent directors, for the use of the company making the appointment of such directors.</p>

		2. This notification shall come into force with effect from the 1st day of December, 2019.
11. MINISTRY OF CORPORATE AFFAIRS VIDE NOTIFICATION NO. S.O. 3955 (E)	30.10.2019	<p><u>Notification - Section 396 dt 30.10.2019 for ROC Jammu -Jurisdiction of UT of JK and UT of Ladakh</u></p> <p>In exercise of the powers conferred by sub-sections (1) and (2) of section 396 of the Companies Act, 2013 (18 of 2013), the Registrar of Companies Jammu shall have jurisdiction in respect of Union territory of Jammu and Kashmir and Union territory of Ladakh, for the purpose of registration of companies and discharging the functions under the aforesaid Act.</p> <p>2. This notification shall come into force with effect from 31st October, 2019.</p>
12. MINISTRY OF CORPORATE AFFAIRS VIDE NOTIFICATION NO. S.O. 3956 (E)	30.10.2019	<p><u>Notification date 30.10.2019-ROC Jammu-Jurisdiction of Adjudication of Penalties-UT of JK and UT of Ladakh</u></p> <p>In exercise of the powers conferred by section 454 of the Companies Act, 2013 (18 of 2013) read with the Companies (Adjudication of Penalties) Rules, 2014, the Central Government hereby makes the following further amendment in the notification of the Government of India in the Ministry of Corporate Affairs, published vide number S.O.831 (E), dated the 24th March, 2015, namely:-</p> <p>In the said notification, in the Table, against serial number 5 for the entries, the following entries shall be substituted, namely,-</p>

<p>13. MINISTRY OF CORPORATE AFFAIRS VIDE NOTIFICATION NO. S.O. 3957 (E)</p>	<p>30.10.2019</p>	<p><u>Notification date 30.10.2019- Jurisdiction of RD, New Delhi -UT of JK and UT of Ladakh</u></p> <p>In exercise of the powers conferred by sub-section (1) of section 396 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following further amendment in the notification of the Government of India in the Ministry of Corporate Affairs, published vide number G.S.R 832(E), dated the 3rd November, 2015, in the said notification, against serial number (1), in column (2), for the entry , the following entry shall be substituted, namely:-</p> <p>“States of Haryana, Punjab, Himachal Pradesh, Uttar Pradesh, Uttarakhand and Union territories of Chandigarh, Jammu and Kashmir, Ladakh and National Capital territory of Delhi.”.</p> <p>2. This notification shall come into force with effect from 31st October, 2019.</p>
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Companies Act, 2013 Case Studies
By Advocate P.K Mittal, +91-9811044365

✚ In the matter of Su-Kam Power Systems Ltd. vs. Kunwer Sachdev and Ors. MANU/DE/3503/2019

The High Court of Delhi rendered the deed of assignment relating to trademark invalid, on account of lack of quorum under section 287 of the Companies Act, 1956 as the votes of two out of three directors i.e. the defendant No.1 and his wife were disregarded for being

beneficiaries/interested directors by virtue of section 300 of the act. The High court also observed that the said deed was void for breach of fiduciary duty as it had been executed by defendant no. 1 as both assignor and assignee which is contrary to the duties placed on the director of the company under section 166 of the companies act, 2013.

✚ **In the matter of E.Shanmugam Vs. Bank of India & Ors. Company Appeal (AT) (Insolvency) No.1053 of 2019**

NCLAT held that Appellant having continued as Managing Director until before new management came in place of old management there being a conflict of interest coming in between, the 'Resolution Professional' was directed not to include him as the member of the 'Committee of Creditors'.

✚ **State Bank of India and Anr. Vs Visa Steel Limited and Anr. Company Appeal (AT) No. 240 of 2019**

NCLAT made clear that interest of the parties including the Appellants and other Creditors will not be affected because of the impugned order of Demerger. All those right are kept open for determination by the respective DRTs. It was also made clear that if there is any other right in favour of any of the 'Financial Creditor', who has moved before the DRT under any provision of law, the same will not be affected because of the impugned order of Demerger.

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

✚ **In the matter of Action Ispat & Power Pvt. Ltd. Vs. Shyam Metalics& Energy Limited and Ors.MANU/DE/3262/2019**

The Delhi High Court while upholding the impugned order passed by the Ld. Company Judge in C.A. No. 1240/2018,dismissed the appeal and observed that: Merely because the learned Company Judge had ordered the winding up of the appellant company, it does not follow that the appellant company should necessarily be liquidated and dissolved. The other options available, namely to resolve/revive the appellant company can and should always be explored for which purpose the NCLT is invested with jurisdiction, unless irrevocable steps towards liquidation have already been undertaken.

✚ **In the matter of Forech India Ltd. vs. Edelweiss Assets Reconstruction Co. Ltd. MANU/SC/0080/2019**

The Supreme Court observed that When the I&B Code was enacted, only winding up petitions, where no notice under Rule 26 of Companies (Court) Rules was served, were to be transferred to NCLT and treated as petitions under Code. However, on a working of Code, Government realized that parallel proceedings in High Courts as well as before NCLT would hamper the objective of the I&B Code, which was to revive the corporate debtors. The Apex court also observed that-Section 11 of Code was of limited application and only barred a corporate debtor from initiating a petition under Section 10 of Code in respect of whom a liquidation order had been made.

✚ **In the matter of Abhay N. Manudhane Vs Gupta Coal India Pvt. Ltd. Company Appeal (AT) (Insolvency) No. 786 of 2019**

NCLAT observed that it is clear that a Corporate Debtor in respect of whom a liquidation order has been made is not entitled to make applications under the sections 7 & 9 of the I&B code. Therefore, no application can be filed by the Corporate Debtor, which is under Liquidation of which the Appellant is Liquidator.

✚ **In the matter of Jindal Steel and Power Ltd. Vs. Gujarat NRE Coke Ltd. Company Appeal (AT) No. 221 of 2018**

NCLAT allowed the appeal in the present case and held that the promoter if ineligible u/s 29A of IBC, cannot make an application for compromise and arrangement for taking back the immovable and movable property or actionable claims of the 'corporate debtor'.

✚ **In the matter of M/S Saregama India Ltd. Vs. M/S Home movie makers Pvt. Ltd. Company Appeal (AT) (Insolvency) No. 359 of 2019**

NCLAT observed that the appellant who claims to be a Financial Creditor, claims made by it is not a financial debt.

It was observed by the Tribunal that the appellant has not disbursed money against the consideration for time. The appellant is a financial debt within the meaning of section 5(8) of IBC. Hence, the appeal was dismissed.

BY: PRADEEP K. MITTAL

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