

PKMG LAW CHAMBERS

ADVOCATES AND SOLICITORS

MONTHLY REPORT FOR OCTOBER, 2014

ADVISER

Mr. PRADEEP K. MITTAL

B.Com., LL.B., FCS, Advocate

Central Council Member

The Institute of Company Secretaries of India

E-mail: pkmittal171@gmail.com

: pradeepmittalpkmg@gmail.com

: 9811044365, 9911044365

Dr. SUDHIR K. AGGARWAL

B.Com (Hons.), FCA, MBA(F)

Past Chairman, NIRC of The Institute of Chartered Accountants of India.

Past Chairman-Association Of National Exchanges Members of India

Contact: 9881102149

SEBI-LAWS

Mr. C.M.BINDAL

FCS

Company Secretary in Practice – Jaipur

E-mail: bindalcm@yahoo.com,

09414962454

INCOME TAX

Mr. HIMANSHU GOYAL

B.Com., LL.B., ACA,

E-mail: himanshu.goyal@vedjainassociates.com

9899566764

CIVIL LAWS

Mr. PRAVEEN K. MITTAL

B.Com., LL.B.,

E-mail: pkmittal171@gmail.com

9810826436

HONORARY ADVISER

Dr. SANJEEV KUMAR

M.Com. LL.B., Ph.D, PGDPIRL, AICWA, FCS

EXECUTIVE DIRECTOR – BAJAJ HINDUSTHAN LIMITED

**CIRCULARS AND NOTIFICATIONS ISSUED BY THE MINISTRY OF
CORPORATE AFFAIRS (MCA) IN THE MONTH OF SEPTEMBER, 2014.**

▪ **Notification dated: 12/09/2014**

In exercise of the powers conferred under section 135 and subsections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules to amend the Companies (Corporate Social Responsibility Policy) Rules, 2014, namely:-

In the Companies (Corporate Social Responsibility Policy) Rules, 2014, in rule 4, in sub-rule (6), after the words "but such expenditure" the words and comma "including expenditure on administrative overheads," shall be inserted.

The link for the original circular is :-

http://www.mca.gov.in/Ministry/pdf/NCA_Rules_12092014.pdf

▪ **Circular No.36/2014 dated: 17/09/2014**

The circular mentions clarification with regard to provisions of Corporate Social Responsibility (CSR) under Section 135 of the Companies Act, 2013. It clarifies that the Rule 4(6) of the Companies Act, 2014 as notified on 27.02.2014 has been amended by notification dated 12.09.2014 and clarification (iv) in general circular No. 21 of 2014 dated 18.06.2014 stands omitted.

The link for the original circular is :-

http://www.mca.gov.in/Ministry/pdf/circular_36_17092014.pdf

▪ **Notification dated: 18/09/2014**

In this notification the Central Government hereby makes different rules to amend the Companies (Appointment and Qualification of Directors) Rules, 2014. The notification mentions that in the Companies (Appointment and Qualification of Directors) Rules, 2014:-

(1) in rule 6,

(a) in sub-rule (2) -

(i) clause (c) shall be omitted;

(ii) in clause (d), the words "and mother's name and Spouse's name (if married)" shall be omitted;

(b) in sub-rule (4), the words letters and figure "in Form DIR-1" shall be omitted.

- (2) in rule 9, in sub-rule (3),
(a)(i) in clause (a), for the words "therein and sign the form", the words "therein, verify and sign the form" shall be substituted;
(ii) sub-clause (iv) shall be omitted.
- (b) after sub-rule (3), the following sub-rule shall be inserted, namely:-
- "(4) In case the name of a person does not have a last name, then his or her father's or grandfather's surname shall be mentioned in the last name along with the declaration in Form No. DIR-3A.";
- (3) in rule 10,-
(a) in sub rule (1), for the words and letters "the provisional DIN shall be generated by the system automatically which shall not be utilized till the DIN is confirmed by the Central Government", the words "an application number shall be generated by the system automatically" and letters shall be substituted;
- (b) In sub rule (2), for the words and letters "the provisional DIN" the words "application number" shall be substituted;
- (c) In sub rule (4), the words and letters "the provisional DIN so allotted by the system shall get lapsed automatically and" shall be omitted.
- (4) after rule 10, the following rule shall be inserted, namely:-
- '10A. (1) Every director, functioning as a director in one or more companies on or before the 30th June, 2007 and who has not yet intimated his DIN to such company or companies shall, within one month of the receipt of Director Identification Number from the Central Government, intimate his Director Identification Number to the company or all companies wherein he is a director in Form DIR-3B.
- (2) The intimation by the company of Director Identification Number of its directors under section 157 of the Act shall be furnished in Form DIR-3C within fifteen days of receipt of intimation under section 156.
- (5) in rule 11, after the words "application received,, the words ..along with fee as specified in Companies (Registration Offices and Fees) Rules, 2014,, shall be inserted.
- (6) in rule 12, in sub-rule (1), for sub-clause (i), the following sub-clause shall be substituted, namely:-

"(1) The applicant shall download Form DIR-6 from the portal, fill in the relevant changes, verify the Form and attach duly scanned copy of the proof of the changed particulars and submit electronically.";

(7) the existing Form DIR-1 shall be omitted.

The link for the original circular is :-

http://www.mca.gov.in/Ministry/pdf/NCA_Rules_18092014.pdf

**CENTRAL EXCISE -BY SHRI PRADEEP K MITTAL-
9811044365**

- In case there is a delay on the part of Department to send refund payable to the assessee, the department is under obligation to pay interest which is automatic irrespective of the fact whether the assessee made demand for interest or not. Even if the party has waived the interest, yet the department is under legal obligation to make payment of interest. Siddhant Chemicals Vs. UOI 2014(307) ELT 44 (All.)
- In a quasi-judicial proceedings i.e. proceedings before the Central Excise Authorities, the cross examination of witness is a valuable right of the notice and the same cannot be denied to the party. In the event of denial, it shall amount to violation of principle of natural justice and the proceedings culmination into demand, are liable to be set aside and quashed. CCE Vs. Kurbele Pan Products (P) :Ltd 2014(307) ELT 42 (All).
- In case the manufacturer has paid the duty on the invoices for supply of inputs and the said invoice has been endorsed by the purchaser of those inputs in the name of the assessee. Clearly the assessee is entitled to cenvat of the excise duty paid on the duty paid inputs – although the invoice is not in the name of assessee. Dharshan Industries vs. UOI 2014(307) ELT 36 Guj DB.

- The Bombay High Court has passed a stricture against the Excise Tribunal by observing that the final order passed, at the stage of the consideration of stay application, when there is no discussion about the contents of Show Cause Notice, Reply to the Show Cause and documents relied upon. The final order has been passed in cryptic manner without even any broad discussion – such order-in-appeal is liable to be quashed and set aside. CCE Vs. Mahindra & Mahindra Ltd 2014(307) ELT 77 (Bom).
- In a very shocking case, the Asstt. Commissioner vide his order-in-original confirmed the demand of excise duty on 27.12.2013 and just about 5 days, he wrote a letter dated 23.1.2014 to comply with the orders passed on 27.12.2013 – (without realizing that there a time period of 60 days provided under the law to file an appeal before the Commissioner – Appeal. The Asstt. Commissioner, in a most high handed and arbitrary manner seek to recover the amount. The Hon'ble High Court stayed the recovery till the time of consideration of stay petition by the Commissioner Appeal. Tata Teleservices Maharashtra Ltd Vs. UOI 2014(307) ELT 90 (Bom).
- There is no need to reverse the Cenvat Credit in respect of Waste arising out of production of Final Products – hence, there is no need to reverse the credit in respect of Bagasse and Press Mud which is admittedly waste products. Once there is no duty liability, obviously, there is no question of payment of interest and penalty by the assessee to the Department. MRK Coop. Sugar Mills Ltd vs. CCE 2014(307) ELT 128 (Tri).
- When there is a difference between the ER-1 Return and the figures shown in the Balance Sheets and the difference has been properly explained by the assessee and at the same time, there is no other clinching evidence of clandestine removal of goods against the assessee, the demand cannot be confirmed on the ground of clandestine removal of goods

and the same is liable to be set aside and quashed. Industrial Filter & Fabrics (P) Ltd vs. CCE 2014(307) ELT 131 (Tri-Del.).

- Due to shortage of space in warehouse inside the factory, the manufacturer has kept the inputs outside the factory and the same has come back and has been used in the manufacture of finished goods on which the duty has been paid, the cenvat credit cannot be denied merely on the ground that the inputs were kept outside the factory. Priyadarshini Polysacks Ltd vs. CCE 2014(307) ELT 136 (Tri).
- In case the liquid glucose has been supplied by the manufacturer in the durable barrel supplied by the purchaser of the goods, the value of durable barrel (either fully or partly) is not required to be added in the assessable value for the purpose of levy of excise duty on the glucose. Sahyadri Starch & Industries (P) Ltd Vs. CCE 2014(307) ELT 154 (Tri).

**SERVICE TAX - BY SHRI PRADEEP K MITTAL
-9811044365**

- In case the Head Office has not been registered as an Input Service Distributor, the Tribunal has allowed the Cenvat Credit distributed to its various manufacturing units when there is no dispute that the Cenvat credit so distributed is either not as per law or more than what the assessee is entitled, the Cenvat credit cannot be dis-allowed merely on the ground that the Head Office was not registered. Demosha Chemicals (P) Ltd Vs. CCE 2014(34) STR 758 (Tri).
- The Gujarat High Court has held that the assessee is entitled to cenvat credit on onward transportation for clearance of final products from the place of removal to the place of delivery. CCE Vs. Ellora Time Ltd 2014(34) STR 801 (Guj).

- The excise duty paid on welding electrodes used in the manufacture of plant and machinery is entitled to cenvat credit. Plastic crates used for transferring unprinted bottle for printing—ultimate process of manufacture is not complete and, therefore, duty paid on crates is entitled to credit. The service tax paid on mobile phones, taxi services is also eligible. CCE Vs. Ace Glass Container Ltd 2014(34) STR 805 (Uttarakhand).
- The appellant is providing Credit Card Agency Services and has availed advisement, event management and catering services on which service tax has been paid – there shall not be correlation of one to one service for purpose of availing service. Once it is established that the input service has been used for providing even any other taxable service, the cenvat credit would be eligible service. SBI Card & Payment Services (P) Ltd Vs. CCE 2014(34) STR 858 (Tri).
- The exporter is entitled to refund of service tax paid on terminal handling charges once it is established that the exporter has exported the goods and the such terminal handling charges were used in or in relation to export of such goods. CCE Vs. Pratap Re-Rolling Pvt Ltd 2014(34) STR 868 (Tri).
- Service Tax Credit can be distributed by the Head Office only when the services were received at the Head Office under proper duty paying documents and if the same were received at any other place, the cenvat credit cannot be allowed unless it is established that service so received were meant for Head Office but in relation to manufacture of dutiable goods of the manufacturing unit. NITCO Ltd Vs. CCE 2014(34) STR 835 (Tri).

- The procedure as laid down under Section 391 and 394 is also applicable to the petition under Section 100 of the Companies Act, 1956 for reduction of share capital. The mode, manner and incidence of reduction of share capital is regarded matter of domestic concern and there is no restriction in following the mode of reduction of share capital. In the face of no opposition from shareholder, creditor or member of public, the petition is liable to be allowed. RS Livemedia (P) Ltd 2014 (209) DLT 229. Delhi.
- Where a statutory notice of winding up under Section 433 and 434 has been dispatched and the same has come back with remarks “refused”, it shall amount to deemed service and the winding up petition would be maintainable. Grant Thornton India LLP Vs. Resolution Capital Global (P) Ltd 2014(209) DLT 16.
- The winding up petition is not genuine mode for recovery of money which is bonafide disputed by the Respondent. The question of inability to pay debts arises only when there is no dispute or defense about pay ability of amount by the Respondent to the petitioner. Nimbus Harbor Facilities Management (P) Ltd Vs. Mind & Soul Fitness (P) Ltd 2014 (209) DLT 772 Delhi High Court.
- In case the amount is not bonafide disputed and the dispute is sought to be created, the winding up petition shall be maintainable and the respondent shall be directed to pay the amount under the winding up failing which the Official Liquidator shall be appointed as a provisional liquidator. V. V. Enterprises Vs. Rungta Irrigation Ltd 2014(209) DLT 748 Delhi High Court.
- The Hon’ble Bombay High Court has held that the procedure contained in Section 110 of the Companies Act, 2013 for compulsory voting by postal ballot and by electronic voting to the exclusion of actual meeting cannot and do not apply to Court convening the meeting for approval of Scheme of Amalgamation/Arrangement. At such meetings, the Court

further held that in such meetings, the provisions must be made for postal ballot and electronic voting in addition to an actual meeting. At the same time, the electronic voting must also be made available at the venue of the meeting and any shareholder who has cast his vote by postal ballot or by electronic voting from a remote location (other than the venue of the meeting) shall not be entitled to vote at the meeting. Vadala Commodities Ltd. 2014 (121) CLA 186 (Mumbai)

- In case the amount sought to be recovered U/s 433 (e) of the Companies Act, 1956 by filing of a winding up petition before the High Court, the winding up petition could be dismissed if it is found that such contract was made in contravention of the provisions of the Companies Act, 1956 (in this case, no approval of Central Government under Section 299 of the Companies Act, 1956). Jayanth Pharma Chem Vs. Kekule Pharma Ltd. 2014 (121) CLA 276 AP.
- Once it is found that the Statutory Notice U/s 433 has been dispatched at the address of the registered office of the Company and the address is as per the website of MCA, if the envelope comes back with the remark left without address, the Respondent cannot be heard that the notice has not been served upon them. Symphony Service Corporation India Pvt. Ltd. Vs. MG Flow 2 Technology Pvt. Ltd. 2014 (121) C:A 281 Delhi.
- The Company being juristic person, are entitle (viz-a-viz its shareholders) to hold both immovable and movable properties, which are in the name of the Company and belonged to the Company. The shareholder, who holds 20% share in such Company, is not entitled to partition of immovable or movable properties on the contentions that he hold 20% share in the Company. Ramesh Kumar Vs. Mahesh Kumar 2014 (212) DLT 677 Delhi DB.
- In case Form 8 has been signed by way of putting digital signature of a Director for the purpose of registration of

charge and filed with the ROC, it can be presumed that the Company has fulfilled its obligations and has made no default. Kotak Mahindra Bank Ltd. Vs. Nagarjuna Travels and Hotels Ltd. 2014 (121) CLA 558 (CLB).

- In a petition U/s 111 or 111A of the Companies Act, 1956, the Company can file a petition only when there is an error in transfer of shares and/or omission in relation to name of member from the Register of Member. However, the petition shall not be maintainable to seek specific performance of the contract. Mathstraman Manufacturers and Traders Pvt. Ltd. Vs. Malayalam Industries Ltd. 2014(121) CLA 562 CLB.
- In a petition U/s 397 of the Companies Act, 1956, the Company Law Board, in exercise of power U/s 402 can relax the provisions of Section 77A of the Companies Act, 1956 i.e. buy-back of shares. Nitin Mukund Sahasradhojane Vs. Venus Automation Pvt. Ltd. 2014 (121) CIA 565 CLB.

**CORPORATE LAWS - BY SHRI PRADEEP K. MITTAL -
9811044365**

- A notice U/s 138 of NI Act, the name of the signatory must appear and it should be clear that the notice has been issued by an authorized officer of the Respondent Company. In case the notice has been issued by an officer, who is not competent, the notice is not a valid notice and, therefore, the complaint so filed on the basis of the said notice is not a valid notice in law. 2014 (2) KLT 211 Abida Vs. HMT Watches Ltd.
- Upon dishonor of the cheque, if a letter has been sent to the party who has issued the cheque and it is written "Kindly do the needful", it cannot be treated as a valid demand notice and, therefore, no legal proceedings can be initiated on the basis of the alleged demand notice. 2014(3) CTC 358 P.R.Panchamuthu Vs. M.M.Finance Corporation.

- Section 22 of Sick Industrial Companies (Special Provisions) Act does not bar the initiation of Criminal Proceedings u/s 138 of NI Act for dishonor of a cheque despite the fact that the Company is a Sick Industrial Company. S.J.Bakshi Vs. State of Maharashtra 2014 (121) CLA 10 (SNR) (Mumbai).
- The arrears of Income Tax can be recovered from the Directors of the Private Limited Company as per section 179 of the Income Tax Act, 1961. However, such arrears cannot be recovered U/s 179 in case of a Public Limited Company. Radhey Mohan Sharma Vs. DLT 2014 (121) CLA 265 Gujarat.
- In case a sick Company has filed reference before BIFR and after filing the reference, the BIFR has passed an Order of status-quo with respect to movable and immovable property of the Company, thereafter one third secured creditors of Sick Industrial Company have moved under SARFAESI Act U/s 40(1) of the SARFAESI Act therefore, the proceeding before the BIFR abete and secured creditors are entitled to proceed further. DENA Bank Vs AAIFR 2014 (211) DLT 651 Delhi DB.
- When the post-dated cheques have been issued for debt in present but payable in future – though details of such cheques were given under the head security in loan agreement, this will not change the very basic character that the cheques were given in discharge of debt or liability and hence the complaint U/s 138 of NI Act cannot be dismissed on this technical ground. S.S.Rao Vs Indian Renewable Energy Limited 2014 (212) Delhi Law Times 689 Delhi.
- It is most respectfully submitted that the Supreme Court once again has re-written the law concerning the territorial jurisdiction where the complaint U/s 138 of NI Act can be filed i.e. the place where the cheque is dishonored by the Bank on which it was drawn and not any other place. D.R.Rathore Vs. State of Maharashtra 2014 (121) CLA 499 SC.

- In a Complaint U/s 138 of NI Act for dishonor of cheque, it is absolutely necessary that there should be specific and categorical allegations about the role played by the accused persons otherwise the complaint is liable to be dismissed qua the persons against whom specific and categorical allegations leveled. Mannalal Chamaria Vs. State of West Bengal 2014 (121) CLA 536 SC.

**CIVIL LAW - BY SHRI PRAVEEN K. MITTAL -
9810826436**

- The Supreme Court has, in the case of Kaley Vs. Dy. Director of Consolidation 1976 (3) SCC 119, held that complete sanctity be accorded to a family settlement in the interest of peace, amity and goodwill among the family members. The Court further held that no person, who was a party to such settlement, shall be permitted to resile from or impeach the same at a later point of time. The Court further held that the family arrangement or settlement need not be in writing and register, it could even be oral. Tehbahadur Vs. Debi Singh AIR 1966 SC 292.
- It is a well settled proposition of law that –
 - <a. one who comes to the court, must come with clean hands;
 - <b. fraud vitiates all judicial acts;
 - <c. whether any rem or any personam;
 - <d. fraud and justice never dwell together or fraud deceit ought not to benefit anyone.
- It is a primary duty and the highest responsibility of the Court to correct such orders at the earliest and restore the confidence of the litigating public in the purity of fountain of justice. AVP Shastry Vs. Govt. of AP 2007 (4) SCC 221.

- The Compensatory damages are allowable U/s 73 of the Indian Contract Act when such damages or loss naturally arises in usual course of things from the breach of contract – Delhi High Court.
- Mere marking of documents as exhibit does not amount to the fact that the document stand proved in accordance with Indian Evidence Act. Further, the onus to prove a particular fact lies upon the person who alleges the same as per Section 101 and 102 of the Indian Evidence Act. VIRTUS-Dordrecht B.V. Vs. Vikram Bhargava 2014 (212) Delhi Law Times 601 Delhi HC.
- While considering the application under Order 7 Rule 11 of the CPC, the Court has to naturally look to the averments in the plaint and also the document filed along with the suit. The contentions raised by the Defendants in their written statement or any other documents have absolutely no relevance. Further, the question of court fee must be considered in the light of averments in the plant and not on the basis of plea raised by the Defendants in the written statement. Sanjay Bhargava Vs. Seema Bargava 2014 (2012) DLT Delhi HC.
- The amendment of the pleadings has to be allowed liberally when amendment sought does not change the basic nature and character of the company petition. At the time of consideration for amendment of pleadings, the merit of the amendments need not to be dealt with. Bhupinder Rai Vs. S.M.Kannappa Automobiles Pvt. Ltd. 2014 (121) CLA 538 Karnataka HC.

**ARBITRATION & CONCILIATION ACT, 1996 - BY SHRI
PRAVEEN K. MITTAL-9810826436**

- It cannot always be said that in case the contract is void-ab-initio, the Court exercising the power U/s 8 and 11 of the Arbitration and Conciliation Act, 1996 cannot refer the dispute of arbitration and cannot appoint the sole Arbitrator. Swiss

Timings Vs. Organizing Committee Commonwealth Games
2010 Delhi 2014 (121) CLA 171 SC.

- The Arbitrator cannot ignore express prohibition contained in the agreement as the Arbitrator is the creator of agreement. National Highway Authority of India Vs. HCC Limited 2014 (211) DLT 656.

Your suggestions and contributions are of great importance to us. Please give us your FEEDBACK, so that this Bulletin may be made of real use to you. Please write to us with your views and contributions at pkmittal171@gmail.com

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 not a spam mail.

CIRCULATION BY

**THIS REPORT IS CIRCULATED
BY SHRI PRAVEEN K. MITTAL
FOR PKMG LAW CHAMBERS,
171 CHITRA VIHAR, DELHI-110092,
PHONES: (011) 22540549,22524229 AND 9810826436
EMAIL: pkmittal171@gmail.com**

