EXECUTIVE PROGRAMME

UPDATES RELEVANT
FOR
DECEMBER, 2020 EXAMINATION

COMPANY LAW
MODULE 1- PAPER 2

(New Syllabus)

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Lesson 1-Introduction to Company Law

MCA has Further Amended the Exemptions notification no: G.S.R. 463(E), dated 5th June, 2015 related to Government Companies vide notification no: G.S.R. 151(E), dated 02nd March, 2020.

(i) With this amendment the following new explanation is inserted in the definition of Government Company as per Section 2(45) of the Companies Act, 2013:

Explanation- For the purposes of this clause, the "paid up share capital" shall be construed as "total voting power", where shares with differential voting rights have been issued.

Impact

With this insertion more clarity has been given to the definition of Government Company which has issued the Shares with the differential voting rights.

(ii) The Serial Number 1 and entries relating thereto of notification number G.S.R.463 (E), dated 5th June, 2015, has been renumbered as Serial Number 1A.

For more details click on: ***http://www.mca.gov.in/Ministry/pdf/Notification_02032020.pdf***

Lesson 2-Share and Share Capital

1) **Notification No: G.S.R.111 (E)-The Companies (Issue of Global Depository Receipts) Amendment Rules, 2020, dated 13th February, 2020**.

Impact:

(i) In Rule 2 of the Companies (Issue of Global Depository Receipts) Rules, 2014, for the words 'Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993' at both the places where they occur has been substituted with 'Depository Receipts Scheme, 2014'.

(ii) In Rule 2(1), after clause (a), the following clause shall be inserted, namely:- (aa) overseas depository" or "overseas depository bank" shall mean 'foreign depository' as defined in the Scheme.

Rule 5(1) is substituted to provide more clarity, which is as under: The depository receipts can be issued by way of public offering or private placement or in any other manner prevalent in the concerned jurisdiction and may be listed or traded on the listing or trading platform in the concerned jurisdiction.

Further a proviso is also inserted in Rule 7 which states that the proceeds of the issue of depository receipts maybe remitted in an International Financial Services Centre Banking Unit (IBU) and utilized in accordance with the instructions issued by the RBI from time to time.

In Rule 5 (3) and Rule 9 (1), the word "abroad" shall be omitted.

For more details click on: http://www.mca.gov.in/Ministry/pdf/notices_13022020.pdf

2) **Notification No: G.S.R. 372(E)-The Companies (Share Capital and Debentures) Amendment Rules, 2020, dated 5th June, 2020**

(i) In Rule 8, in sub-rule (4), in the second proviso of the Companies (Share Capital and Debentures) Rules, 2014, MCA has substituted the old definition of startup-company which was issued by the Department of Industrial Policy and Promotion (DIPP) vide. Notification No. G.S.R. 180(E) dated 17th February, 2016 with the new definition as issued by the Department for Promotion of Industry and Internal Trade (DPIIT) vide Notification No. G.S.R. 127(E) dated 19th February, 2019.

(ii) In Rule 8(4) in the second proviso of the Companies (Share Capital and Debentures) Rules, 2014 for the words:

"five years"

The following shall be substituted

"ten years"

Post Amendment Second proviso to Rule 8(4) of the Companies (Share Capital and Debentures)

Rules, 2014 shall be read as under:

A startup company as defined in notification number **G.S.R. 127(E), dated the 19th February, 2019 issued by the Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry**, Government of India, may issue sweat equity shares not exceeding 50% of its paid-up capital upto **10 (ten) years** from the date of its incorporation or registration.

(Earlier the time period was upto 5 (five) years from the date of incorporation or registration.)

For more details click on: http://www.mca.gov.in/Ministry/pdf/Rule_08062020.pdf

Judicial Pronouncements

29.01.2020	**Bank of Baroda (Appellant) v. Aban Offshore Limited (Respondent)**	**NCLAT**

Remedies available for Preference shareholders in relation to redemption of preference shares

Fact of the case

The present Appeal has been filed by the Appellant w.r.t the NCLT, Chennai Bench (Tribunal) order who has dismissed the application of Appellant solely on the ground that the Appellant being preferential shareholders has no locus standi to file application for redemption of shares under Section 55(3) of the Companies Act, 2013 or even under Section 245 of the Companies Act, 2013.

The Appellant has submitted that the Respondent Company is a listed Company with Madras Stock Exchange Limited, Bombay Stock Exchange Limited and National Stock Exchange of India Limited. The Appellant has subscribed on various dates i.e.09.07.2005, 29.05.2007 and out of total subscription of Rs. 30,00,00,000/- worth of cumulative Redeemable Non-Convertible Preference Shares at varying coupon rate of 8% and 9% per annum; has also consented on 31.10.2011 for extended/rolled over of redemption of preference share for a period of 3 years from the date of original redemption date.

The Appellant has also submitted that the Respondent Company has not yet redeemed any preference shares inspite of they are paying equity dividend to the extent of 180% for the equity shareholders in the financial Year 2014-15. The Respondent has defaulted on the redemption as well as payment of dividend for the Financial Year 2015-16 onwards and the said defaults continues till date. The Appellant has also submitted that they have been made the remediless by the Tribunal for not considering the issue of redemption of preference shares either under Section 55 or Section 245 of the Companies Act, 2013.

Issues: Whether there is any remedy under law available to preference shareholders for filing application for redemption of preference shares?

The Respondent has submitted that the Appellant is only representing in these proceedings and none others representatives from the class of shareholders i.e. Preference shareholders class are representing. They are not eligible to file application under Section 245 of the Companies Act, 2013 because Section 245 clearly reflects that an application must be filed by minimum requisite members of the Company. They cannot unilaterally decide that they are empowered to represent a class of shareholders.

Judgement

The National Company Law Appellate Tribunal (NCLAT) examined that intention of the legislature while promulgating Section 55 of the Companies Act, 2013 was to compulsorily provide for redemption of preference shares by doing away with the issue of irredeemable preference shares. Therefore, even though there is no specific provision stipulated under the Companies Act, 2013 through which relief can be sought by preference shareholders in case of non-redemption by the company or consequent non-filing of petition under Section 55 of the said Act, the intention of the legislature being clear and absolute, Tribunal's inherent power can be invoked to get an appropriate relief by an aggrieved preference shareholder(s).

Alternatively, preference shareholders coming within the definition of 'member(s)' under Section 2(55) read with Section 88 of the Companies Act, 2013, may file a petition under Section 245 of the said Act, as a class action suit, being aggrieved by the conduct of affairs of the company. Thereby, it was held that preference shareholders are not remediless and for redemption of preference shares, they can file an application under Section 55(3) of the Companies Act, 2013 or alternatively they may also file application under Section 245 of the Companies Act, 2013 as a class action suit and the NCLT while exercising the inherent power viz. Rule 11 of NCLT Rules, 2016 can pass appropriate order.

Hence, the findings of the NCLT that the Appellant being preference shareholders has no locus standi to file application for redemption of preference shares does not hold good. Thus, NCLT, Chennai Bench impugned order was set aside. The matter is remitted back to NCLT, Chennai Bench to decide the application as per law.

Lesson 4: Debt Capital and Deposits

MCA Notification No: G.S.R. 372(E)-The Companies (Share Capital and Debentures) Amendment Rules, 2020, dated 5th June, 2020

(iii) In Rule 18 (7), in clause (b), for sub-clause (v) of the Companies (Share Capital and Debentures) Rules, 2014, the following shall be substituted namely:

"(v) In case a company is covered in item (A) 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 such a company, invest or deposit, as the case may be, a sum which shall not be less than fifteen percent., of the amount of its debentures maturing during 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)

Provided that the amount remaining invested or deposited, as the case may be, shall not 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."

Impact

The requirement of investment or deposit, of a sum by a company which shall not be less than fifteen percent., of the amount of its debentures maturing during the year, ending on the 31st day of March of the next year on or before the 30th day of April in each year, in respect of debentures issued by such a company, is not applicable on privately placed debentures by the Listed NBFCs and for Housing Finance Companies and other listed companies.

For more details, please click on http://www.mca.gov.in/Ministry/pdf/Rule_08062020.pdf

Judicial Pronouncements

28.01.2020	The Canning Industries Cochin Ltd. (CAICO) vs. SEBI	SAT

The present appeal has been filed against the order dated 18th March, 2019 passed by the Whole Time Member (WTM), Securities and Exchange Board of India (hereinafter referred to as 'SEBI') issuing various directions under section 11, 11(4), 11A, 11B and 19 of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act').

The contention of the appellant is, that Section 42 of the Companies Act is not applicable in the instant case and that the issue of the share capital is under Section 62(3) of the Companies Act, 2013 which has not been considered.

The contention of the learned senior counsel for SEBI is, that since the offer of FCDs was for more than 200 persons, the said offer is a deemed public offer and therefore part one of the Chapter 1 of the Companies Act is required to be followed.

Judgment:

The Tribunal held that, as per Section 71(5) of the Companies Act, 2013- No company shall issue a prospectus or make an offer or invitation to the public or to its members exceeding five hundred for the subscription of its debentures, unless the company has, before such issue or offer, appointed one or more debenture trustees and the conditions governing the appointment of such trustees shall be such as may be prescribed.

A perusal of the aforesaid provision indicates that no offer can be made to its members exceeding 500 for the subscription of its dentures unless the Company, before such offer or issue has appointed a trustee. Thus, the restriction is that debentures could be issued to only 500 persons if there is no trustee appointed by the Company.

However, the restriction of 500 persons is done away if a trustee was appointed by the Company. In the instant case, it is an admitted fact that a trustee was appointed. Thus there was no restriction to the number of shareholders to whom the debentures would be issued. In the light of the aforesaid, the impugned order passed by the Whole Time Member cannot be sustained. The interim order as well as the impugned order and the directions so issued are all quashed. The appeal is allowed.

19.09.2018	**M/s Ind-Swift Limited (Appellant) vs. Registrar of Companies (Respondent)**	**NCLAT**

Repayment of Deposits accepted before Commencement of the Companies Act, 2013

Fact of the case

Appellant is a Listed company, it had accepted deposits since 2002 and regularly paid back till 28.02.2013. In 2013, it started facing liquidity problems and incurred losses. The Appellant company filed application before CLB and obtained relief under Section 58AA read with Section 58A (9) of the erstwhile Companies Act, 1956 and got instalments fixed to repay deposits, Appellant again sought re-fixing of periods, instalments and rate of interest from NCLT, New Delhi bench under Section 74 of the Companies Act, 2013. NCLT rejected the application. This appeal is against rejection of the application/s.

Issues:

Whether the Appellant company which has already got relaxation from CLB under Section 58AA read with Section 58A (9) of the erstwhile Companies Act, 1956 and got instalments fixed to repay deposits, can again apply for re-fixing of periods, instalments and rate of interest for repayment of deposits accepted before commencement of the Companies Act, 2013 ?

Judgement

The NCLAT observed that the NCLT considered that the Appellant had at the time of first grant of time got relief of huge extension and that there was no reason to accept the plea for further extension. The NCLT appears to have found that when big relief had already been granted to the Company, further extension was not justified.

Section 76(2) read with Sections 73 and 74 would apply to acceptance of deposits from public by eligible Companies but it saves the Company which had accepted or invited public deposits under the relevant provisions of the old Act and Rules thereunder and has been repaying such deposits and interests thereon in accordance with such provisions, then the provisions of Clause (b) of Sub-Section (1) of Section 74 of the new Companies Act, 2013 shall be deemed to have been complied with. This is, however, subject to the fact that the Company complies with the requirements under the Act and the Rules and "continues to repay such deposits and interest due thereon on due dates for the remaining period" as per the terms and conditions.

Considering these provisions, it appears to us that Section 74(1)(b) was attracted and when it appears from record that the Appellant defaulted, the penal provisions would get attracted.

Thus, when once a scheme had been got settled, from CLB, default on the part of the Appellant would attract penal provisions as the earlier scheme itself laid down. Hence, present appeal for further extension is dismissed.

Lesson 5- Charges

Judicial Pronouncements

1. Official Liquidator v. Sri Krishna Deo, (1959) 29 Com Cases 476: AIR 1959 All 247 and Roy& Bros. v. Ramnath Das, (1945) 15 Com Cases 69, 75 (Cal)]. The plant and machinery of a company embedded in the earth or permanently fastened to things attached to the earth became a part of the company's immovable property and therefore apart from the registration under the Companies Act, registration under the Indian Registration Act would also be necessary to make the charge valid and effective.

2. Cosslett (Contractors) Ltd., Re, (1996) 1 BCLC 407 (Ch D) A construction company's washing machine which was in use at the site was declared under the terms of the contract to be the employer's property during the period of construction. This was held to have created a fixed charge and not a floating charge on the machine because the machine was only one fixed item and was not likely to change.

3. In Lord Macnaghten in Government Stock Investment Company Ltd. v. Manila Rly. Company Ltd., (1897) A.C. 81, observed "is an equitable charge on the assets for the time being of a going concern. It attaches to the subject charged in the varying condition in which it happens to be from time to time. It is the essence of such a charge that it remains dormant until the undertaking charged ceases to be a going concern, or until the person in whose favour the charge is created intervenes".

4. Illingworth & Another v. Holdsworth & Another, (ibid). "A floating charge is ambulatory and shifting in its nature hovering over and so to speak floating with the property which it is intended to affect until some event occurs or act is done which causes it to settle and fasten on the subject of the charge within its reach and grasp.

5. Maturi U. Rao v. Pendyala A.I.R. 1970 A.P. 225 When the floating charge crystallizes it becomes fixed and the assets comprised therein are subject to the same restrictions as the fixed charge.

6. In Smith v. Bridgend County Borough Council (2002) 1 BCLC 77 (HC), the agreement was held to constitute a floating charge, in so far as it allowed the employer, in various situations of default by the contractor,to sell the contractor's plant and equipment and apply the proceeds in discharge of its obligations. A right to sell an asset belonging to a debtor and appropriate the proceeds to payment of the debt could not be anything other than a charge. It was a floating charge because the property in question was a fluctuating body of assets which could be consumed or removed from the site in the ordinary course of the contractor's business.

Lesson - 7 Corporate Social Responsibility

1) General Circular No.10/2020, Clarification on spending of CSR funds for COVID-19 dated 23rd March, 2020

Ministry of Corporate Affairs has clarified, that spending of CSR funds for COVID-19 is eligible CSR activity.

Funds may be spent for various activities related to COVID-19 under item nos. (i) and (xii) of Schedule VII relating to promotion of health care, including preventive health care and sanitation, and, disaster management. Further, as per General Circular No. 21/2014 dated 18th June, 2014, items in Schedule VII are broad based and may be interpreted liberally for this purpose.

For more details click on: http://www.mca.gov.in/Ministry/pdf/Covid_23032020.pdf

2) MCA vide Notification No: G.S.R. 313(E), dated 26th May, 2020 has made following Amendment in item no (viii) in the Schedule VII of the Companies Act,2013,

In Schedule VII, item (viii), after the words "Prime Minister's National Relief Fund", the words "or Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund)" shall be inserted.

This notification shall be deemed to have come into force on 28th March, 2020.

Impact

The PM-CARES Fund has been set up to provide relief to those affected by any kind of emergency or distress situation. Accordingly, With this amendment any contribution made to the PM CARES Fund shall qualify as CSR expenditure under the Companies Act 2013 w.e.f. 28.03.2020.

For more details click on: www.mca.gov.in/Ministry/pdf/Notice_27052020.pdf

3) Notification No:G.S.R. 399(E) Amendment in Schedule VII of the Companies Act, 2013, dated 23rd June,2020

MCA vide notification dated 23rd, June 2020 made further amendment in Schedule VII **in item no. (vi)** ***included the measures for the benefit of Central Armed Police Forces (CAPF) and Central Para Military Forces (CPMF) veterans, and their dependents including widows***, in the Corporate Social Responsibility activities under schedule VII of the Companies Act, 2013.

For more details click on:
http://www.mca.gov.in/Ministry/pdf/NotificationCompAct_10072020.pdf

Judicial Pronouncement

13.11.2019	Apurva Natvar & Company India Private Limited vs. Registrar of Companies, Mumbai	NCLT, Mumbai bench

Section Violated: Section 135 r/w 134(3)(o) of the Companies Act, 2013.

Fact of the case: The Company has violated the provision of Section 135 r/w Section 134 (3) (o) of the Companies Act, 2013 (hereinafter as Act) r/w. Rule 8 of Companies (Corporate Social Responsibility Policy) Rules, 2014 wherein the Company has not made CSR Expenditure and has not explained the reasons in Board's Report of F. Y. 2014-15 for non-spending of the CSR amount along with other disclosure as required under Section 135 (2) of the Act.

Provisions of Companies Act, 2013

According to the provision of Section. 135 (5) of the Act, the Board of the Company was required to spend, in every financial year, at least 2% of the average net profit of the Company during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility (CSR) policy, applicable to every company having net worth of Rupees Five Hundred Crore or more, or turnover of Rupees One thousand crore or more, or having net profit of Rupees Five Crore or more, during Financial Year. Further the provision of S. 134 (3) (o) provides that, if company fails to comply with the provision of S. 135 (5), then the Board in its report shall specify the reasons for not spending the amount.

But the Applicants / Defaulters herein, have not complied with the provision of S. 134 (3) (o) of the Act. But the Company had made the default good by constituting the CSR committee and by furnishing declaration in the Board of Directors Report from the F. Y. 2015-16.

NCLT, Mumbai bench observed that Application made by the Applicants/Defaulters herein for compounding of offence committed under S. 134 (3) (o) of the Companies Act, 2013, merits consideration, though belatedly the default has been made good. The NCLT on 21/08/2019 imposed a Compounding Fee of Rs 1,00,000/- on the Company and Rs. 1,00,000/- each on the Directors of the Company that the Compounding fee should be paid within a period of three weeks from the date of order in the account of "Prime Minister's National Relief Fund."

Lesson-8- Accounts, Audit and Auditors

1) MCA vide Notification no: G.S.R.13(E)-The Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules 2020,dated 03rd January,2020 has amended Rule 9(1) of the Companies (Appointment and Remuneration of Managerial Personnel) Rules 2014

With this insertion in Rule 9(1) of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, now every company having outstanding loans or borrowings from banks or public financial institutions of one hundred crore rupees or more is also required to annex the Secretarial Audit report with its Boards Report.

MCA has also clarified that for the purpose of this rule paid up share capital, turnover, or outstanding loans or borrowings as the case may be, existing on the last date of latest audited financial statement shall be taken into account.

For more details click on: http://www.mca.gov.in/Ministry/pdf/AmdtRules_06012020.pdf

2)The Companies (Auditor's Report) Order, 2020 dated 25th February 2020

MCA vide notification dated 25th February, 2020 has notified the Companies (Auditor's Report) Order, 2020.Vide this notification, the CARO Report, 2020 would have been applicable from the financial year 2019-20.

But due to outbreak of COVID-19, in order to ease the burden on companies & their auditors for the financial year 2019-20, the Government has decided that the Companies (Auditor's Report) Order, 2020 shall be made applicable from financial year 2020-21, instead of being applicable from the financial year 2019-20 as notified earlier.

For more details click on: http://www.mca.gov.in/Ministry/pdf/Orders_25022020.pdf

http://www.mca.gov.in/Ministry/pdf/Notification_25032020.pdf

Judicial Pronouncement

04.06.2019	**Hari Sankaran (Appellant) Vs. Union of India & Ors. (Respondents)**	**The Supreme Court of India**

NCLAT order of allowing re-opening of books and recasting of financial statements of IL&FS is valid.

Facts of the case:

The facts leading to the present appeal in nutshell are as under:

The Respondent No. 2 – IL&FS is a company incorporated under the provisions of the Companies Act, 1956. That the said company IL&FS has 348 group companies, including IFIN and ITNL. That the said IL&FS is a core investment company and systemically important Non-Banking Finance Company duly approved under the Reserve Bank of India Act, 1931.

Over the years, it had inducted institutional shareholders. That on 01.10.2018, the Central Government through the Ministry of Corporate Affairs filed a petition before the learned Appellate Tribunal under Sections 241 and 242 of the Companies Act alleging inter alia, mismanagement by the Board of IL&FS and that the affairs of IL&FS were being conducted in a manner prejudicial to public interest. It was found that the management of IL&FS and other group company/companies were responsible for negligence and incompetence, and had falsely presented a rosy financial statement.

To unearth the irregularities committed by IL&FS and its companies, the provisions of Section 212(1)(c) of the Companies Act were invoked for investigation into the affairs of the company. The investigation was to be carried out by the Serious Fraud Investigation Office (hereinafter referred to as 'the SFIO') in exercise of powers under Section 212 of the Companies Act. The SFIO submitted an interim report dated 30.11.2018 to the Central Government placing on record that the affairs in respect of IL&FS group Companies were mismanaged, and that the manner in which the affairs of the company were being conducted was against the public interest.

The Registrar of Companies also conducted an enquiry under Section 206 of the Companies Act, and prima facie concluded that mismanagement and compromise in corporate governance norms and risk management has been perpetuated on IL&FS and its group companies by indiscriminately raising long term and short terms loans/borrowings through Public Sector Banks and financial institutions.

This appeal was filed by Infrastructure Leasing & Financial Services Limited (referred to as 'IL & FS') before the Supreme Court of India against the order dated 31.01.2019 passed by the NCLAT, vide. the said order the Appellate Tribunal has dismissed the appeal preferred by the Appellant and has confirmed the order passed by the NCLT, Mumbai Bench dated 01.01.2019 by which the NCLT allowed the application preferred by the Central Government under Section 130(1) & (2) of the Companies Act, 2013 and has permitted recasting and re- opening of the accounts of IL&FS, IL&FS Financial Services Limited ("IFIN") and IL&FS Transportation Networks Limited ("ITNL") for the last five years.

Issues

The question which is posed for consideration before the Hon'ble Supreme Court is, whether in the facts and circumstances of the case, can it be said that the order passed by the learned Tribunal is illegal and/or contrary to Section 130 of the Companies Act?

Judgement

The Supreme Court of India inter-alia observed that the Tribunal may, under Section 130 of the Act, pass an order of re-opening of accounts if it is of opinion that

(i) the relevant earlier accounts were prepared in a fraudulent manner; or
(ii) the affairs of the company were mismanaged during the relevant period casting a doubt on the reliability of the financial statements.

Thus, the Tribunal would be justified in passing the order under Section 130 of the Act upon fulfillment of either of the said two conditions.

In view of the above referred legal position in addition to the reports of SFIO & ICAI, the specific observations made by the learned Tribunal while passing the order under Section 241/242 of the

Companies Act and considering the fact that the Central Government has entrusted the investigation of the affairs of the company to SFIO in exercise of powers under Section 242 of the Companies Act, the Apex Court observed that it cannot be said that the conditions precedent while invoking the powers under Section 130 of the Act are not satisfied.

The Supreme Court of India upheld the order passed by NCLAT under Section 130 of the Companies Act for reopening of the books of accounts and re-casting the financial statements of the Infrastructure Leasing & Financial Services Limited; IL&FS Financial Services Limited and IL&FS Transportation Networks Limited for the last five years, viz. from Financial Year 2012-13 to the Financial Year 2017-18 in larger public interest and dismissed the appeal.

Lesson -10 An overview of Inter-Corporate Loans, Investments, Guarantees and Security, Related Party Transactions

MCA has Further Amended the Exemptions notification no: G.S.R. 463(E), dated 5th June, 2015 related to Government Companies vide notification no: G.S.R. 151(E), dated 02nd March, 2020.

For serial number 26 relating to Chapter XII, first and second proviso to Section 188 (1) and the entries relating thereto of exemption notification number G.S.R.463(E), dated 5thJune, 2015, the following entries has been substituted as under:

First and Second proviso to Section 188 (1) shall not apply to –

(a) A Government company in respect of contracts or arrangements entered into by it with any other Government company, or with Central Government or any State Government or any combination thereof;
(b) A Government company, other than a listed company, in respect of contracts or arrangements other than those referred to in clause (a), in case such company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government before entering into such contract or arrangement.

Impact

Before this amendment the contracts or arrangements with any other Government Company is only exempted, with this amendment the exemption is also extended to the contracts or arrangements with the Central Government or any State Government or any combination thereof.

For more details click on: ***http://www.mca.gov.in/Ministry/pdf/Notification_02032020.pdf***

Lesson 12-An Overview of Corporate Re-organisation

1) Notification no: G.S.R. 46(E) - The Companies (Winding Up) Rules 2020, dated 24th January, 2020 (effective from 1st day of April, 2020).

MCA vide its notification dated 24th day of January 2020 published Companies (Winding-Up) Rules, 2020 laying down procedures for winding up by the Tribunal under Chapter XX of the Companies Act, 2013 which will be effective from 1st day of April 2020.

The Companies (Winding Up) Rules 2020 provides rules for Winding up by Tribunal, Winding up by Tribunal (other than summary winding up) Debts and Claims against Company. The Winding up rules has also provided the Summary Procedure for Liquidation of Companies, Filing and Audit of Company Liquidator's Account etc.

For more details click on: http://www.mca.gov.in/Ministry/pdf/Rules_28012020.pdf

2) MCA vide Notification No: G.S.R. 79(E)-The Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2020, dated 03rd February, 2020 has amended the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

MCA vide notification dated 3rd February, 2020, has introduced the Companies (Compromises, Arrangements, and Amalgamation) Amendment Rule, 2020 for further amending the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 wherein the norms for filing the application for arrangement is specified :

As per the amended rules new sub-rule (5) has been inserted after sub-rule (4) in Rule 3, accordingly, a member of a company making an application for the arrangement pertaining to the takeover offer in terms of Section 230 (11) must fulfill two conditions namely:

- such member along with any other member shall hold not less than three-fourths of the shares in the company, and
- such application has been filed for the purpose of acquiring any part of the remaining shares of the company.

Further, the amendment also provides for the norms pertaining to the contents of the application. An application of arrangement for takeover offer shall contain:-

The report of a registered valuer disclosing the details of the valuation of the shares proposed to be acquired by the member after taking into account the following factors:—

(i) the highest price paid by any person or group of persons for acquisition of shares during last twelve months;
(ii) the fair price of shares of the company to be determined by the registered valuer after taking into account valuation parameters including return on net worth, book value of shares, earning per share, price earning multiple vis-à-vis the industry average, and such other parameters as are customary for valuation of shares of such companies

The application filed by a member must contain the details of a bank account, to be opened separately, by the member wherein a sum of amount not less than one-half of total

consideration of the takeover offer is deposited.

For more details click on: http://www.mca.gov.in/Ministry/pdf/Rules1_04022020.pdf

3) Commencement Notification of Section 230 (11) & (12) of the Companies Act, 2013, 3rd February, 2020

In exercise of the powers conferred by sub-section (3) of section 1 of the Companies Act, 2013 (18 of 2013), the Central Government hereby appoints the 03rd February,2020 as the date on which the provisions of sub-sections (11) and (12) of section 230 of the Companies Act, 2013 shall come into force.

For more details click on: http://www.mca.gov.in/Ministry/pdf/Notification_04022020.pdf

20.12.2019	**Joint Commissioner of Income Tax (OSD), Circle (3)(3)-1 & Ors.(Appellants) vs. Reliance Jio Infocomm Ltd. & Ors. (Respondents)**	**NCLAT**

Mere fact that a Scheme of Arrangement may result in reduction of tax liability does not furnish a basis for challenging the validity of the same.

The NCLAT, held that without going to the record and without placing any evidence or substantiating the allegation of avoidance of tax by appearing before the Tribunal, it was not open to the income tax department to hold that the composite scheme of arrangement amongst the petitioner companies and their respective shareholders and creditors is giving undue favour to the shareholders of the company and also the overall scheme of arrangement results into tax avoidance.

The NCLAT observed that mere fact that a scheme may result in reduction of tax liability does not furnish a basis for challenging the validity of the same. The Income Tax Department, which sought for liberty, while accepted by the Petitioner Companies (Respondents herein) and the NCLT, Ahmedabad bench while approving the Composite Scheme of Arrangement has granted liberty. Such liberty to the Income Tax Department to enquire into the matter, if any part of the Composite Scheme of Arrangement amounts to tax avoidance or is against the provisions of the Income Tax and is to let it take appropriate steps if so required. Thus, NCLAT upheld the decision of NCLT, Ahmedabad bench and in view of the liberty given to the Income Tax Department decided not to interfere with the Scheme of Arrangement as approved by the Tribunal and dismissed the appeals filed.

06.07.2020	**Aruna Oswal (Appellant) vs. Pankaj Oswal & Ors.(Respondents)**	**The Supreme Court of India**

Dispute of Inheritance of Shares is a civil dispute, it cannot be decided under section 241/242 of the Companies Act, 2013

Fact of the case:

The brief facts of the case are that Late Mr. Abhey Kumar Oswal, during his lifetime, held as many as 5,35,3,960 shares in M/s. Oswal Agro Mills Ltd., a listed company. He died on 29.3.2016. Mr. Abhey Kumar Oswal filed a nomination according to section 72 of the Companies Act, 2013 in favour of Mrs. Aruna Oswal, his wife. Two witnesses duly attested the nomination in the prescribed manner. The name of Mrs. Aruna Oswal, the appellant, was

registered as a holder on 16.4.2016 as against the shares held by her deceased husband.

Pankaj Oswal (respondent no.1), son of late Abhay Oswal filed a partition suit in High Court claiming entitlement to 1/4th of the estate of his father including the deceased's shareholdings. The High Court passed an interim order to maintain status quo concerning shares and other immoveable property.

While the suit was pending, respondent no.1 also moved the NCLT, Chandigarh, alleging 'oppression and mismanagement' under Section 241/242 of the Companies Act, 2013 in the affairs of respondent no.2 company. The appellant challenged the maintainability of the petition. The NCLT directed filing of reply to the petition, without deciding the question of maintainability.

This was challenged before NCLAT, which in turn directed the NCLT to decide the question of maintainability of the petition. The NCLT thereafter dismissed the challenge to maintainability and held that the respondent no.1, being a legal heir, was entitled to one-fourth of the property/shares. Therefore, the matter eventually reached the Supreme Court of India.

Judgement

Supreme Court observed that the basis of the petition is the claim by way of inheritance of 1/4th shareholding so as to constitute 10% of the holding. This is the right, which cannot be decided in proceedings under Section 241/242 of the Companies Act, 2013. Thus, filing of the petition under sections 241 and 242 seeking waiver is a misconceived exercise as the, respondent no.1 has to firmly establish his right of inheritance before a civil court to the extent of the shares he is claiming; more so, in view of the nomination made as per the provisions contained in Section 71 of the Companies Act, 2013. In order to maintain the proceedings, the respondent should have waited for the decision of the right title and interest, in the civil suit concerning shares in question.

The orders passed by the NCLT as well as NCLAT are set aside, and the appeals are allowed.

Lesson 13- An Introduction to MCA 21 and Filing in XBRL

1) Notification No:G.S.R.60(E)-The Companies (Accounts) Amendment Rules, 2020, dated 30th January,2020

In the Companies (Accounts) Rules, 2014 in rule 12, after sub-rule (1), the following sub-rule shall be inserted, namely:- —

(1A) Every Non-Banking Financial Company (NBFC) that is required to comply with Indian Accounting Standards (Ind AS) shall file the financial statements with Registrar together with Form AOC-4 NBFC (Ind AS) and the consolidated financial statement, if any, with Form AOC-4 CFS NBFC (Ind AS).

For more details click on : http://www.mca.gov.in/Ministry/pdf/Rules_31012020.pdf

2) Notification no: G.S.R. 81(E) NIDHI (Amendment) Rules 2020, dated 3rd February, 2020 (effective from 10th February, 2020).

New Forms were notified in place of existing NDH-1, NDH-2 & NDH-3.

(i) FORM NO. NDH-I: Return of Statutory Compliances
(ii) FORM NO. NDH-2: Application for extension of time
(iii) FORM NO. NDH-3: Return of Nidhi Company for the half year ended

For more details click on: http://www.mca.gov.in/Ministry/pdf/Rules2_04022020.pdf

3) Notification No:G.S.R.114(E)-NIDHI (Second Amendment) Rules, 2020, dated 14th February, 2020.

In the Nidhi Rules, 2014, in rule 23A, for the words "six months" the words "nine months" shall be substituted.

Impact

*As per the amended rule 23A- every company referred to in clause (b) of Rule 2 of Nidhi Rules and every Nidhi incorporated under the Act, before the commencement of Nidhi (Amendment) Rules, 2019 i.e.15.08.2019, shall also get itself declared as Nidhi in accordance with rule 3A of Nidhi Rules,2014 within a period of one year from the date of its incorporation or within a period of **nine months** from the date of commencement of Nidhi (Amendment) Rules, 2019 i.e. 15.08.2019, whichever is later.*

(The period was initially 6 months from commencement of Nidhi (Amendment) Rules, 2019 which is hereby extended for another 3 months.)

For more details click on: http://www.mca.gov.in/Ministry/pdf/rule_14022020.pdf

4) Corrigendum pertaining to Nidhi (Second Amendment) Rules, 2020, dated 2nd March, 2020.

The Ministry of Corporate Affairs vide its notification no: G.S.R.-150(E), dated 2nd March, 2020 has issued a corrigendum pertaining to Nidhi (Second Amendment) Rules, 2020, notification dated 14th February, 2020.

As per the corrigendum

At page 2, in line 9, for "rule 23A" read "rule 23A and first proviso to rule 23B".

Hence, in the Nidhi Rules, 2014, in rule 23A and first proviso to rule 23B for the words "six months" the words "nine months" shall be substituted.

Post Amendment

As per the amended rule, in the first proviso to rule 23B, no fees shall be charged under this rule for filing Form NDH-4, in case it is filed within ***nine month*** *of the commencement of Nidhi (Amendment) Rules, 2019 i.e. 15.08.2019.*

(The period was initially 6 months from commencement of Nidhi (Amendment) Rules, 2019 which is hereby extended for another 3 months.)

For more details click on: http://www.mca.gov.in/Ministry/pdf/rule_02032020.pdf

5) Sensitization of Nidhi Companies towards compliance of provisions of Section 406 of Companies Act, 2013 and Nidhi Rules, 2014 as amended vide Nidhi (Amendment) Rules, 2019 w.e.f 15.08.2019 and general public to invest in genuine and compliant Nidhis only.

In order to make regulatory regime for Nidhi Companies more effective and also to accomplish the objectives of transparency & investor friendliness in corporate environment of the country, the Central Government has recently amended the provisions related to NIDHI under the Companies Act, 2013 and the Rules (effective from 15.08.2019).

Under Nidhi Rules, 2014, Nidhi is a company which has been incorporated as a Nidhi with the object of cultivating the habit of thrift and saving amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit.

The amended provisions of the Companies Act (Section 406) and Nidhi rules (as amended w.e.f. 15.08.2019) require that the Nidhi companies have to apply to the Central government for updation of their status/ declaration as Nidhi Company in Form NDH-4.

The time-frame for applying to Central Government in form NDH-4 is as under:-

(I) Companies incorporated as Nidhi before Nidhi Amendment Rules, 2019 i.e. 15.08.2019 have to apply within a period of one year from the date of its incorporation or within 9 months of the

Nidhi Amendment Rules i.e. 15.08.2019 whichever is later.

(II) Companies incorporated as Nidhi on or after Nidhi Amendment Rules, 2019 i.e. 15.08.2019 have to apply within 60 days of expiry of one year from the date of incorporation or extended period (as granted by concerned Regional Director).

1) In case a company does not comply with the above requirements, it shall not be allowed to file Form No. SH–7 (Notice to Registrar for any alteration of share capital) and Form PAS–3 (Return of Allotment).

2) Such companies are required to ensure strict adherence to provision of Companies Act, 1956/2013 and Nidhi Rules, 2014 as amended. In case of contravention of the provisions of these Rules, the company and every officer of the company who is in default shall initially be punishable with fine which may extend to five thousand rupees and further fine in case of continuous violations.

3) Investors are advised to verify the status of Nidhi company from the notification issued by Central Government in official gazette before making any investment or deposit.

For more details click on: http://www.mca.gov.in/Ministry/pdf/Nidhi_19032020.pdf

6) Notification Number G.S.R. 127(E)-The Companies (Registration Offices and Fees) Amendment Rules, 2020, dated: 18th February, 2020.

As per the Amendment Rules, Form No- GNL-2 [Pursuant to rule 12(2) of the Companies (Registration Offices and Fees) Rules, 2014] i.e. Form for submission of documents with the Registrar shall be substituted. New Form notified in place of existing GNL-2

For more details click on :http://www.mca.gov.in/Ministry/pdf/rule_19022020.pdf

7) Notification Number G.S.R. 128(E)-The Companies (Incorporation) Amendment Rules, 2020 (Effective from 23rd February, 2020)

In the Companies (Incorporation) Rules, 2014, for rule 9,

The following rule shall be substituted, namely:-

Rule 9 of the Companies (Incorporation) Rules, 2014 -Reservation of name or change of name

An application for reservation of name shall be made through the web service available at www.mca.gov.in by using web service SPICe+ (Simplified Proforma for Incorporating Company Electronically Plus: INC-32) and for change of existing name by using web service RUN (Reserve Unique Name) along with fee as provided in the Companies (Registration Offices and Fees) Rules, 2014, which may either be approved or rejected, as the case may be, by the Registrar, Central Registration Centre after allowing re-submission of such web form within fifteen days for rectification of the defects, if any, with effect from the 23rd February, 2020.

In rules 10, 12, sub-rule (1) of rule 19, sub-rules (1), (2), (3), (4), (7) and (9) of rule 38 of the Companies (Incorporation) Rules, 2014, for the words, "Form No INC-32 (SPICe), wherever they occur, the following words **"SPICe+ (Simplified Proforma for Incorporating Company Electronically Plus: INC -32)"** shall be substituted with effect from the 23rd February, 2020.

In Rule 38 of the Companies (Incorporation) Rules, 2014

In the marginal heading, for the word, "**Electronically (SPICE)",** the words, **"Electronically Plus (SPICE +)"** shall be substituted with effect from the 23rd February, 2020.

In rule 38A of the Companies (Incorporation) Rules, 2014 –

(i) In the marginal heading for the words, **'and Employees' Provident Fund Organisation (EPFO) Registration** the following words, "**Employees' Provident Fund Organisation (EPFO) Registration and Profession Tax Registration and Opening of Bank Account"** shall be substituted.

(ii) for the letters "AGILE", the letters "AGILE - PRO", shall be substituted;

(iii) after clause (c*), the following clauses shall be inserted, namely*: -

"(c) Profession Tax Registration with effect from the 23rd February, 2020
(d) Opening of Bank Account with effect from 23rd February, 2020."

Impact

As part of Government of India's Ease of Doing Business (EODB) initiatives, the Ministry of Corporate Affairs has introduced a new Web Form 'SPICe+' w.e.f. 23rd February, 2020 replacing the existing SPICe form. SPICe+ is an integrated Web form offering multiple services viz.name reservation, incorporation, DIN allotment (Maximum 3 DIN), mandatory issue of PAN, TAN, EPFO registration, ESIC registration, Profession Tax registration (Maharashtra) and Mandatory opening of Bank Account for the Company. It also facilitates allotment of GSTIN wherever so applied for by the Stakeholders. After introduction of SPICe+ web form RUN is applicable only for the change of name of the existing companies.

For more details click on : http://www.mca.gov.in/Ministry/pdf/rule_22022020.pdf

8) New companies incorporated through SPICe+ and thereby have obtained EPFO/ESI numbers will have to file statutory returns only when they cross thresholds prescribed under the relevant Acts.

For more details click on : http://www.mca.gov.in/MinistryV2/homepage.html

9) Notification No: G.S.R. 170(E)-The Companies (Registration Offices and Fees) Second Amendment Rules, 2020, dated 12th March, 2020.

In the Companies (Registration Offices and Fees) Rules, 2014, in the Annexure, in Form No. GNL-2.

(i) in serial number 3, after item number "Form 159 of the Companies (Court) Rules,1959"

the following item shall be inserted, namely.-

"Filing under Insolvency and Bankruptcy Code, 2016".

(ii) after the first verification column, the following shall be inserted, namely.-

"Particulars of the person signing and submitting the form"

Name	
Capacity	

For more details click on :http://www.mca.gov.in/Ministry/pdf/rule1_13032020.pdf

10) Notification Number G.S.R.-169(E) - The Companies (Incorporation) Second Amendment Rules, 2020, dated 12th March, 2020.

In the Companies (Incorporation) Rules, 2014, in the Annexure, in Form No.INC-28, in serial number 5, in clause (a) after sub-clause (ii), the following sub-clause shall be inserted, namely-

"(iii) Section of Insolvency and Bankruptcy Code, 2016 under which order passed"

For more details click on : http://www.mca.gov.in/Ministry/pdf/rule_13032020.pdf

Lesson-16 Directors

1) General Circular No. 1/2020-Clarification on prosecutions filed or internal adjudication proceedings initiated against Independent Directors, Non-Promoters and Non-KMP Non-Executive Directors, dated 02nd March, 2020.

This circular clearly shows the ministry's resolve and intent to give protection to independent directors and other non-executive directors from prosecution for both civil and criminal offenses, unless there is strong evidence against them being party to any fraud committed by the company.

Section 149(12) of the Companies Act, 2013 is a non-obstante clause which provides that an independent director and a non-executive director not being promoter or key managerial personnel shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently.

In view of this expressed provision of Section 149(12) of the Companies Act, 2013, Independent Directors and Non-Executive Directors (not being promoter or KMP) should not be arrayed in any criminal or civil proceedings under the Act, unless the above mentioned criterion is met.

MCA has clarified that at the time of serving notices to the company during inquiry, inspection, investigation or adjudication proceedings etc, necessary documents may be sought so as to ascertain the involvement of concerned officers of the Companies and due care must be taken to ensure that unnecessarily any civil or criminal proceedings is not initiated against the Independent directors or Non-Executive Directors unless sufficient evidence exists against them.

The records available in the office of the Registrar, including e-forms DIR-11 or DIR-12, along with the copies of Annual Returns or financial statements should also be examined, so as to ascertain whether a particular director or the KMP was serving in the company as on the date of default.

In case of any doubt, with regard to the liability of any person, for any proceedings required to be initiated by the Registrar, guidance may be sought from the Ministry of Corporate Affairs through the office of Director General of Corporate Affairs. Consequently any such proceedings must be initiated after due sanction from the Ministry. Further, with respect to cases where prosecution may have been already filed but does not meet the above mentioned criteria, then such cases may be submitted to the ministry for necessary examination and further direction.

The Ministry of Corporate Affairs has directed all Registrars of Companies to immediately and scrupulously follow the above Standard Operating Procedure with respect to all ongoing cases.

For more details click on : ***http://www.mca.gov.in/Ministry/pdf/Circular_03032020.pdf***

2) MCA vide notification no: G.S.R.145(E) notified the Companies (Appointment and Qualification of Directors) Amendment Rules, 2020, dated 28th February, 2020

(i) In Rule 6 (1), in clause (a) of the Companies (Appointment and Qualification of Directors) Rules, 2014, MCA has extended the date of registration of details of Independent Directors in

Independent Director Databank by 2 months from initial **"three months"** to **"five months"** from the commencement of the Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019 .

*However, MCA has further extended the date of registration vide **the Companies (Appointment and Qualification of Directors) Second Amendment Rules,2020** dated 29th April,2020 by another 2 months from **five to seven months.***

*Furthermore, MCA vide **the Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2020**, dated 23rd June, 2020 has further extended the period of registration* of *details of Independent Directors in Independent Director Databank under Rule 6(1)(a) **from seven to ten months.***

After all the amendments, revised rule 6(1) clause (a) of the Companies (Appointment and Qualification of Directors) Rules, 2014 shall be read as under:

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 **ten months** from such commencement; or

(b) who intends to get appointed as an independent director in a company after such commencement, shall before such appointment,

apply online to the institute for inclusion of 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 Rule 6(2) of the Companies (Appointment and Qualification of Directors) Rules, 2014, till he continues to hold the office of an independent director in any company.

For more details click on :
http://www.mca.gov.in/Ministry/pdf/rule_28022020.pdf
http://www.mca.gov.in/Ministry/pdf/Rules_29042020.pdf
http://www.mca.gov.in/Ministry/pdf/Rule2_25062020.pdf

(ii) MCA has exempted the experienced Key Managerial Personnel and Directors from online proficiency self-assessment test for the appointment of Independent Directors.

MCA has amended the first proviso to Rule 6(4) of the Companies (Appointment and Qualification of Directors) Rules, 2014, vide the Companies (Appointment and Qualification of Directors) Amendment Rules, 2020, dated 28th February, 2020 as follows:

An individual shall not be required to pass the online proficiency self-assessment test, when he has served as director or KMP, for a total period of not less than 10 years as on the date of inclusion of his name in the databank in one or more following companies:

(a) Listed public company; or

(b) Unlisted public company having a paid-up share capital of rupees ten crore or more; or

(c) Body corporate listed on a recognized stock exchange.

(iii) Second proviso to Rule 6(4) of The Companies (Appointment and Qualification of Directors) Rules, 2014 for the word 'companies' the words "companies or bodies corporate" shall be substituted.

Post Amendment, Second proviso to Rule 6(4) of The Companies (Appointment and Qualification of Directors) Rules, 2014, shall be read as under:

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 or bodies corporate** at the same time shall be counted only once.

For more details click on: http://www.mca.gov.in/Ministry/pdf/rule_28022020.pdf

Judicial Pronouncement

02.12.2019	**G. Vasudevan (Petitioner) Vs Union of India (Rep. by Secretary, Ministry of Corporate Affairs and Ministry of Law and Justice) (Respondents)**	**Madras High Court**

Section 167(1)(a) Companies Act not violative of Articles 14, and 19(1)(g) of the Constitution of India.

Fact of the case:

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Declaration, to declare the "Proviso" in Section 167(1)(a) of the Companies Act 2013, as inserted vide the Companies (Amendment) Act 2017 as ultra vires the Articles 14, 19(1)(g) of the Constitution of India and declare illegal and null and void.

The challenge in the instant writ petition is to the vires of the proviso to Section 167(1)(a) of the Companies Act, as inserted by the Companies (Amendment) Act 2017. The same is extracted hereunder: -
"(i) in clause (a), the following proviso shall be inserted, namely: — "Provided that where he incurs disqualification under sub-section (2) of section 164, the office of the director shall become vacant in all the companies, other than the company which is in default under that sub-section.";

Section 167 of the Companies Act gives instances where the office of a Director shall become vacant. Section 167(1)(a) states that if a Director incurs any disqualification specified in Section164, then he vacates his seat as a Director. The proviso which is under challenge in the instant writ petition states that, when a company commits a default as stipulated in sub-section 2 of Section 164, then a Director of such defaulting company does not vacate the post in the company in which the default is committed but a Director of such a company has to vacate his seat as a Director in all other companies in which he is

Director.

The petitioner contends that proviso to Section 167(1)(a) of the Companies Act, leads to unequal treatment being met out to Directors of a defaulting company based on whether they are Directors in other companies or not. The petitioner claims that since this proviso states that such Directors of a defaulting company would only have to vacate Directorship in other companies while retaining the same in the defaulting company, this leads to unfair treatment to those Directors who hold such posts in multiple companies.

The petitioner further claims that this differential classification is not based on an intelligible differentia and that there is no justification provided for mandating the vacation of Directorship in other companies, thus leading to this provision being arbitrary and violative of Article 14 of the Constitution of India. It is also contended that the impugned provision irrationally has a detrimental effect on other, non-defaulting companies and punishes individual Directors for the defaults of a company even when fault cannot be directly attributed to them. The petitioner also claims that the impugned proviso also violates the principles of natural justice.

Issue

The primary issue in this case relates to whether or not the proviso to Section 167(1)(a) was without justification irrationally mandating the vacating of Directorship in other companies while not providing for the same in the defaulting company ?

Jugement:

The Madras High Court held that the proviso to Section 167(1)(a) must be interpreted in ordinary terms and would apply to the entirety of Section 164 including sub-section 2. The Court has further held that this proviso can be justified on two grounds. Firstly, it has been reiterated that the exclusion of Directors from vacating their posts in the defaulting company while doing so in all other companies where they hold Directorship has been done in order to prevent the anomalous situation wherein the post of Director in a company remains vacant in perpetuity owing to automatic application of Section 167(1)(a) to all newly appointed Directors. Secondly, the underlying object behind the proviso to Section 167(1)(a) is seen to be the same as that of Section 164(2) both of which exist in the interest of transparency and probity in governance, Owing to these justifications, the Court thus holds that the proviso to Section 167(1)(a) is neither manifestly arbitrary nor does it offend any of the fundamental rights guaranteed under Part III of the Constitution of India. Thus, the writ petition is dismissed.

Lesson-17- Appointment and Remuneration of Key Managerial Personnel

MCA vide notification no:G.S.R.13(E)-The Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules 2020, dated 03rd January, 2020 has amended Rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 as follows:-

"Rule 8A. Every private company which has a paid up share capital of ten crore rupees or more shall have a whole-time Company Secretary."

Impact:

With this amendment in rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, MCA has clarified that every private company which has paid-up capital of 10 crore rupees or more need to appoint whole time Company Secretary.

For more details click on: http://www.mca.gov.in/Ministry/pdf/AmdtRules_06012020.pdf

Judicial Pronouncement

23.08.2019	Shiv Kumar Jatia (Appellant) Vs. State of NCT of Delhi (Respondent)	The Supreme Court of India

Shiv Kumar Jatia is the Managing Director of M/s. Asian Hotels which looks after Hyatt Regency Hotel.
He had authorized Mr. PR. Subramanian to apply for lodging license of the hotel. There was a contravention the condition of the lodging license which led to a hotel guest enter into a semi lit under-construction terrace for smoking. The guest fell from the terrace of 6th floor to the 4th floor and got injured. Case was brought before the High Court which ordered for prosecution of the Managing director along with the other three accused by relying on the case of Sushil Ansal vs. State through CBI.

The Apex Court held that vicarious liability on the part of Managing Director and the Directors would arise provided any provision exists in that behalf in the statute. Further, the allegations made on the Managing Director could not establish any active role coupled with criminal intent having direct nexus with the accused.

Court observed that an individual who has perpetrated the commission of an offence on behalf of the company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Further it is also held that an individual can be implicated in those cases where statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.

Though there are allegations of negligence on the part of hotel and its officers who are incharge of day to day affairs of the hotel, so far as appellant Mr. Shiv Kumar Jatia is concerned, no allegation is made directly attributing negligence with the criminal intent attracting provisions under Sections 336, 338 read with Section 32 of IPC. There is no reason and justification to proceed against him only on ground that he was the Managing Director of M/s Asian Hotels (North) Limited, which runs Hotel Hyatt Regency. The mere fact that he was chairing the meetings of the company and taking decisions,

by itself cannot directly link the allegation of negligence with the criminal intent.

The Court has held that the Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company, when the accused is a Company. The allegations made on the Managing Director was vague in nature and the criminal proceedings against Shiv Kumar Jatia as passed by the High Court, New Delhi were quashed.

Lesson 19-General Meetings

Judicial Pronouncement

07.11.2017	Jai Kumar Arya (Petitioner) vs. Chhaya Devi (Respondent)	Delhi High Court

Fact of the case:

The Company received a requisition, from its shareholders, for convening of an Extra Ordinary General Meeting (hereinafter referred to as "EGM") on 26th May 2017, with the following proposals: "(i) removal of the plaintiff (Chhaya Devi) as Director/Managing Director of the Company, (ii) setting aside a notice, earlier issued, for approval of an agenda item, dated 31st of May 2014, to terminate the directorship of the defendants, and (iii) appointment of Defendant No. 1 (Rukmini Devi) as Managing Director of the Company."

On receiving the said requisition, the plaintiff (Chhaya Devi) responded, on 25th April 2017, alleging that the requisition was not in accordance with Section 169, read with Section 115 of the Companies Act, 2013 (hereinafter referred to as "the Act"), in as much as no Special Notice had been served, by the shareholders, on the Company and, instead, the Company had simply been requested to serve notice under Section 169.

This Appeal is against order of restraining other directors from acting upon notice and for convening Board meeting for removal of managing director.

Notice only called for a meeting of Board to decide whether an EGM should be convened or not-- Where managing director filed an interlocutory application for restraining other directors of the company from acting upon notice dated 8-8-2017 for convening board meeting on 26-8-2017 for her removal, and the same was allowed by Single Judge on the ground that there was no proper requisition of shareholders for holding EGM for removal of the MD, but the said notice did not itself convene an EGM, it only called for a meeting of the Board to decide whether an EGM should be convened or not, therefore, the impugned order was to be set aside and the notice dated 8-8-2017 would stand revived.

The court observed that that no specific form or format of a "requisition" is prescribed in the Act, or in any cognate legislation, so that any document issued by the requisite member of Directors as specified in Section 100(2) of the Act (which calls for convening of an EGM) would be eligible to be styled as a "requisition".

Judgement

The court held that there was no obligation to disclose the reasons for removing a person from the directorship of the company prior to the EGM where such proposal was to be considered. Further that, the notice dated 8-8-2017 was itself only a notice for fixing a meeting of the Board of the company. It did not itself convene an EGM, but only calls for a meeting of the Board to decide whether an EGM should be convened or not. Therefore, question of requisition of the shareholders for holding the EGM would not arise. Further that, in the proposed Board meeting, no decision of removal of the MD from the company was to be taken. Hence, the impugned order was to be set aside and the notice dated 8-8-2017 would stand revived.

Other Important updates

1) Notification No: G.S.R. 59(E)-Application of Provisions of Companies Act, 2013 to a Limited Liability Partnership, dated 30th January, 2020

After this notification the provisions of section 460 of the Companies Act, 2013 relating to Condonation of delay in certain cases were also be applicable to a limited liability partnership from the date of publication of this notification i.e. 30th January, 2020.

For more details click on:
http://www.mca.gov.in/Ministry/pdf/NotificationLLP_31012020.pdf

2) Notification no:G.S.R.80(E)- The National Company Law Tribunal (Amendment) Rules, 2020, dated 3rd February, 2020.

1) A new rule 80A has been inserted after Rule 80 of the National Company Law Tribunal Rules, 2016

Rule 80A. Application under section 230. – An application under Section 230 (12) may be made in Form NCLT-1 and shall be accompanied with such documents as are mentioned in Annexure B."

2) In the National Company Law Tribunal Rules, 2016, under the SCHEDULE OF FEES, after S.No.22 and the entries relating thereto, the following shall be inserted, namely:-

22A	Section 230(12)	Application in cases of takeover offer of companies which are not listed.	Rs. 5,000"

3) In the National Company Law Tribunal Rules, 2016, in Annexure-A, under the heading Form No. NCLT.1, after the figure '80', the figure and letter "80A" shall be inserted.

4) In the National Company Law Tribunal Rules, 2016,, in Annexure-B i.e. (List of Documents to be Attached with A Petition or Application) after S.No.12 and the entries relating thereto, the following S.No. shall be inserted, namely:-

12A	Sec 230(12)	Application in cases of takeover offer of companies which are not listed.	1. Affidavit verifying the petition 2. Memorandum of appearance with copy of the Board's Resolution or the executed vakalatnama, as the case may be. 3. Documents in support of the grievance against the takeover.

			4.Any other relevant document.”

A new rule has been inserted as rule 80A in the NCLT Rules enabling an aggrieved party to make an application to the NCLT in the event of any grievances with respect to the takeover offer of companies other than listed companies in Form NCLT- 1 with a fees of 5000 rupees and shall be accompanied with an Affidavit verifying the petition, Memorandum of appearance with copy of the Board’s Resolution or the executed vakalatnama, as the case may be, Documents in support of the grievance against the takeover and any other relevant document.

For more details click on: http://www.mca.gov.in/Ministry/pdf/Rules3_04022020.pdf

3) The Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2020, dated 29th June, 2020

MCA vide Notification dated 29th June, 2020, introduced the Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2020 to further amend the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016.

In Rule 4(3), in clause (i) of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016

the following proviso shall be inserted, namely:-

1) "Provided that in case of a –

(a) Government company in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments; or

(b) subsidiary of a Government company, referred to in clause (a), in which the entire paid up share capital is held by that Government company,

a duly notarised indemnity bond in Form STK-3A shall be given by an authorised representative, not below the rank of Under Secretary or its equivalent, in the administrative Ministry or Department of the Government of India or the State Government, as the case may be, on behalf of the company;".

2) In the said rules, in Form STK 2, in the list of attachments, in serial number 4, at the end, the words "or by an authorised representative of administrative Ministry /Department in Form No. STK - 3A" shall be inserted.

3) In the said rules, after Form STK-3, the Form STK-3A shall be inserted.

Impact:

MCA has notified that while filing Form STK-2 i.e. application for removal of the name from the register of Companies, in case of a company wholly owned by the government or wholly owned

subsidiary of that government company, a duly notarised indemnity bond in Form STK-3A shall be given by an authorized representative, not below the rank of Under Secretary or its equivalent, in the administrative Ministry or Department of the Government of India or the State Government, as the case may be, on behalf of the company.

For more details click on: http://www.mca.gov.in/Ministry/pdf/Rule3_30062020.pdf

Note: Students appearing in December, 2020 Examination should also update themselves on all the relevant Notifications, Circulars, Clarifications order etc. issued by MCA, SEBI, RBI & Central Government on or before six months prior to the date of the examination.