



# eMagazine

**Analysis of noteworthy M&A Ruling in 2015 ... 3**

**Prenuptial Agreements ... 6**

**Applicability of Labour Laws to IT / ITES industry...9**



**Columns:**

From Chairman's Desk... 02

Chapter Activities... 05

Living Room... 08

Words-Worth Millions... 08

e-Tools for the Professionals ... 11

Web Reading... 11

News Room... 12

Spectrum Space... 13

Regulatory Updates ... 14



**Arriving in  
your mailbox  
in July'2016!**

**Rendezvous with  
India's CS No. 1**

**Straight from the  
heart: a tête-à-tête  
with ACS No. 6**

**Articles from Eminent  
Authors  
and  
much more.**

**Stay Tuned...**



**CS M C Bhansali**  
Chairman  
Mysore Chapter

**-: Editorial Team :-**

CS Dattatri H M

CS Sarina C H

CS Omkar Gayatri

CS Abhishek Bharadwaj

CS Ajay Madaiah

CS Vijay Shyam Acharya

CS Madhur N Agrawal

CS Phani Datta D N

**Join**

**5200+ members' strong**

**CS Mysore  
eParivaar**

<http://www.groups.google.com/group/csmysore>

Dear Readers,

Greetings from Mysore Chapter of ICSI!!

Monsoon has set in with the arrival of the south-western monsoon winds over the coast of Kerala bringing positivity among farmer community which puts end to the long wait and brings a sigh of relief to the drought hit parts of the country.

CS Exams for the June 2016 was conducted smoothly. During the month, the Chapter is set to conduct events for its members and students. It has scheduled to hold PCS Day on 15th June, Capital Market Week on 18th June, Yoga Day on 21<sup>st</sup> June, Skill Development Program from 26th June and 2 day Research Symposium will be conducted on 8th & 9th July. Oral Coaching for foundation and Executive stages will begin from 01st July, 2016. I request members and students to actively participate and make the events successful.

Ramadan has begun and it is a time of spiritual reflection, improvement and increased devotion and worship to purify the heart, strengthen the mind and contemplate over doctrine. Wish you all a happy Ramadan.

Thank you...

*Now it's easy to receive the eMagazine directly into your personal mail id. Click <http://goo.g/PVgOlr> and fill-in simple info.*

*You may send this link to your friends too!*

*Please write your comments and feedback to us:  
[newsletter.icsimysore@gmail.com](mailto:newsletter.icsimysore@gmail.com)*

**Disclaimer**

Views and other contents expressed or provided by the contributors are their own and the Chapter does not accept any responsibility. The Chapter is not in any way responsible for the result of any action taken on the basis of the contents published in this newsletter. All rights are reserved.



## Analysis of noteworthy M&A Ruling in 2015

In the calendar year 2015, there have been significant and noteworthy rulings on mergers and amalgamations, wherein the Bombay HC has ruled on the authority of Regional Director to raise income tax related objections in scheme of amalgamation and whether it's mandatory for Transferee Company to allot shares towards consideration of demerger/amalgamation. The Madras HC has ruled whether it's permissible to allow Transferee Company to change its name as a part of scheme of amalgamation. The article contains detailed analysis of significant High Court rulings in 2015 on the schemes relating to merger and amalgamation. The analysis will include broad facts, objections and summary of HC's ruling.

### **Bombay HC held that Regional Director has unqualified right to raise income tax related objections in the Scheme of Amalgamation:**

**Casby CFS (P.) Ltd.**, [2015] 56 taxmann.com 262 (Bombay): In this case, scheme of amalgamation between Casby CFS Pvt. Ltd. ("Transferor Co.") and Casby Logistics Pvt. Ltd. ("Transferee Co.") and their respective shareholders was submitted to the Bombay HC, whereby the entire business and whole of the undertaking of Transferor Co. will be transferred to Transferee Co. with effect from the appointed date. Income Tax Officer ('ITO') of the Transferor and Transferee companies directed to furnish certain information and documents. Regional Director ('RD') also issued a letter requesting the companies to provide information to concerned ITO. The companies informed RD that they have provided necessary information to the concerned ITO and at the same time, the official liquidator has filed Report stating that Scheme was not prejudicial to creditor's interest. However, the RD filed its affidavit raising six objections.

HC perused Sec. 394 and 394A of Companies Act, 1956 and held that vide the provisions of the section, the RD has adequate right/duty to make representation and offer his comments on the Scheme. HC rejected transferor and transferor companies' contention that RD cannot object to the Scheme on the ground that it violates the provisions of Income Tax Act and it is only Income Tax Authorities who may raise an objection in accordance with the MCA Circular dated January 2014. HC held that if Income Tax Department does not communicate its objection to RD, then RD may presume that the department is not objecting to the scheme, but this does not prevent RD from raising objections or making observations on issues relating to taxation laws.

### **Bombay HC held that its non-obligatory for Transferee Company to allot shares towards consideration of demerger/amalgamation, conditions provided in Section 394 of Cos. Act, 1956 are 'enabling' & not mandatory:**

**Thomas Cook Insurance Services (India) Ltd., In re** [2015] 60 taxmann.com 253 (Bombay) : Petition under Sec. 391-394 of Companies Act, 1956 was filed with Bombay HC for seeking sanction of composite scheme of arrangement and amalgamation. The consideration of demerger and amalgamation, respectively, was allotment of 116 equity shares of TCIL of Re.1/- fully paid up for every 100 equity shares of SHRIL of Rs.10/- fully paid up and 4 equity shares of TCIL of Re. 1/- to be paid up for every 100 equity shares of SHRIL of Rs.10/-.

One of the Regional Director's objections was that only Transferee Company can allot shares towards consideration of transfer, and not any other person. The HC held that provisions referred to in clauses (i) to (vi) of sub-section (1) of Sec. 394, which the Court may make while sanctioning the Scheme, are merely 'enabling' provisions and cannot be construed as 'compulsory'. HC further observed that acceptance of any particular consideration is part of commercial wisdom to be exercised by transferor company's shareholders and if the consideration is not against public interest or in any other manner illegal or inappropriate, it is not for Company Court to accept or reject such consideration.

## **Madras HC sanctioned the amalgamation scheme, permitted Transferee Company's name change, held that MCA circulars are 'advisory' in nature**

**Michelin India (P.) Ltd., In re** [2015] 60 taxmann.com 220 (Madras): The Company petitions were filed under Section 391-394 of Companies Act, 1956 with Madras High Court, for sanctioning the scheme of amalgamation. Para 15 of the Scheme stated that upon its sanctioning, Transferee Company's name shall be deemed to have been changed to Transferor Company's name. The Regional Director relied on MCA Circular No.45/2011, dated July 8, 2011 i.e. Name Availability Guidelines, 2011. Pursuant to the specific clause of MCA Circular, the proposed name of the company is considered to be undesirable if it is identical with or too nearly resembling with name of the company in existence and names already approved by Registrar of Companies. The Regional Director objected to such clause in scheme and suggested to follow a separate procedure for such change of name in accordance with Name Availability Guidelines, 2011 (vide the MCA Circular No.45/2011, dated July 8, 2011).

The Madras HC held that Circular referred to by the Regional Director does not have any mandatory effect and is merely advisory in character. The HC relied on the Apex Court's ruling in *Bhagwati Developers v. Peerless General Finance & Investment Co.* [AIR 2005 SC 3345]. HC also observed that the Scheme is fair, just, sound and is not against any public policy / public interest and not violative of any statutory provisions.

## **Andhra Pradesh HC sanctioned amalgamation of 14 land development companies with another company for tax planning purpose, upheld public interest**

**Goman Agro-Farms (P.) Ltd., In re** [2015] 63 taxmann.com 203 (Andhra Pradesh): Company Petition under Sections 391 and 394 of Companies Act, 1956 was filed by 14 Transferor Company (engaged in the business of land development) for amalgamation with Hill County Properties Ltd. ('Transferee Company') for sanction of the amalgamation scheme. The Regional Director objected to the scheme that intention of the scheme was to only offset the losses being suffered by transferee company against profits that are being made by transferor companies which acquired agricultural land at cheaper cost and receiving huge profits from out of land development provided by transferee company with a view to evade payment of income tax.

The Andhra Pradesh HC relied on *Union of India Vs Azadi Bachao Andolan* [2004] 10 SCC 1 (para 17), *Vodafone International Holding B.V. Vs Union of India* [2012] 6 SCC 613 (para 17), observed that if a transaction is entered as sham with a view to circumvent tax laws and evade taxation, the Court will not approve such transaction. HC observed that neither Income Tax Department nor Regional Director has pleaded that proposed arrangement is sham or is intended to violate any law, but a plea was raised for offsetting the losses suffered by Transferee Company. HC observed that the main purpose of proposed amalgamation is to streamline the affairs of the companies by ensuring that all 14 transferor companies (which have stopped their activities) are wound up. HC observed that if one of the reasons for proposed amalgamation is tax planning by applying settled legal position, then scheme cannot be invalidated only on that ground.

## **Gauhati HC directed re-visiting of "illogical, absurd" merger swap-ratio; Upheld Regional Director's objection**

**Buragohain Tea Co. Ltd., In Re** [2015] 64 taxmann.com 11 (Gauhati): An application under Sections 391(2) and 394 of Companies Act, 1956 was filed with Gauhati HC for seeking sanction to the scheme of amalgamation of Buragohain Tea Company Ltd. (Transferor Company) with B&A Ltd. (Transferee Company). The exchange ratio was 786 equity shares of Rs. 10 each of the transferee company against 1 equity share of Rs. 1,000 of the transferor company. The ratio was fixed on fair and reasonable basis based on the valuation report of Chartered Accountants, which was confirmed by an independent Merchant Banker. The Scheme was objected by the chairman of board of directors of Transferee Company who claimed to hold 38% of shares in Transferee Company. The objector stated that a mala fide attempt had been made to deplete her shareholding in the transferee company and stated that the scheme had been devised as part of such a move and accordingly, she sought rejection of the Scheme. The Regional Director raised objection regarding the exchange ratio of shares between the transferor company and the transferee company.

HC observed that the exchange ratio proposed in the scheme is heavily loaded in favour of Transferor Company's shareholders and the ratio appears to be 'unrealistic' and 'illogical'. HC stated that the shares of a company which was under lock out for long period with accumulated losses with petition filed in HC for voluntary liquidation cannot be valued in the manner projected in the scheme. HC rejected company's explanation to the objection about exchange ratio has been fixed on basis of earning capacity of Transferor Company and not on basis of its net asset value or net worth. HC held that such explanation furnished by companies do not inspire the confidence of the Court and no material has been disclosed for calculating the exchange ratio. HC directed that Registrar of Companies to examine the matter through experts and determine a fair and just exchange ratio.

### Conclusion:

In 2016-2017, the provisions relating to merger, amalgamation and arrangements will be notified and the National Company Law Tribunal and National Company Law Appellate Tribunal will be constituted. Then, the company application and company petitions relating to corporate restructuring will be filed with the NCLT first. However, the important principles laid down by the High Court under Section 391-394 of the Companies Act, 1956 will still prevail even when the corresponding provisions under Companies Act, 2013 are notified and NCLT/NCLAT are constituted.

---

## Are we just two steps away from GST?

On June 14, 2016, the Finance ministry has released the draft GST law post meeting with the Empowered Committee of the State Finance Ministers (EC-SFM).

To download draft GST law, please click [http://www.finmin.nic.in/reports/ModelGSTLaw\\_draft.pdf](http://www.finmin.nic.in/reports/ModelGSTLaw_draft.pdf)

The Government would push the Constitutional Amendment Bill (CAB) in the upcoming Monsoon session beginning 3rd week of July 2016.

In case the Government is successful in passage of CAB during Monsoon Session, GST is most likely to be implemented w.e.f. **1st April 2017**. EC-SFM will meet in July'2016 to access progress and deliberate two important procedural issues, i.e., fixing the revenue neutral rate and dual control.

## Chapter Activities

### FIRST BATCH OF 3 DAYS E-GOVERNANCE PROGRAM

ICSI-Mysore Chapter conducted the first batch of 3 Days E Governance Program from 18th May, 2016 to 20th May, 2016 at the Chapter premises. The 3 Day program was conducted by various faculties with related experience in E Governance. The 3 day E Governance was attended by 10 students.





# Prenuptial Agreements:

## Are they valid and enforceable in India? [Part 2]

### Necessity of a Prenup agreement

Prenuptial agreements are, at best, a partial solution to obviating some of the risks of marital property disputes in times of divorce. They protect minimal assets and are not the final word. Nevertheless, they can be very powerful and limit parties' property rights and alimony. It may be impossible to set aside a properly drafted and executed prenup agreement. A prenup agreement can dictate not only what happens if the parties divorce, but also what happens when they die. They can act as a contract to make a will and/or eliminate all your rights to property, probate homestead, probate allowance, right to take as a predetermined heir, and the right to act as an executor and administrator of your spouse's estate.

A prenuptial agreement is only valid if it is completed prior to marriage. After a couple is married, they may draw up a post-nuptial agreement.

If prenuptial agreements were made legal in India, would they really make it easier for women to get maintenance or property rights in case of a divorce? Not in a society as pervasively unequal as India.

But even if the government succeeds in making them legal, many lawyers believe prenups are unlikely to be popular in India, where marriage is considered a religious union and where a bride's family often has fewer bargaining powers than the groom's.

'They will definitely save the court's time'

Prenuptial agreements have been on the government's agenda for many years now, ever since the Marriage Laws (Amendment) Bill was introduced. The major aims of the bill were to include "irretrievable breakdown of marriage" as a clause for divorce and to allow women half the share of her ex-husband's property. "Prenups were lower down on the agenda and they were not discussed earlier, and eventually, even the other amendments proposed in the bill were not passed,"

Prenuptial agreements are in the limelight now, but for them to be given legal validity, Indians would first have to negotiate the link between marriage and religion. "The reason prenups are legally null and void right now is because marriage is considered sanctimonious and religious, and a prenuptial contract is not guided by religion". Even if you have a registered marriage in court, it would be considered as having religious sanctity." In a country steeped in tradition and religion, prenuptial agreements would have limited takers even if they were legal.

### Requirements, Discussion & Drafting of a Prenup Agreement

Five elements are required for a valid prenuptial agreement:

1. agreement must be in writing (oral prenups are generally unenforceable);
2. must be executed voluntarily;
3. full and/or fair disclosure at the time of execution;
4. the agreement cannot be unconscionable;
5. it must be executed by both parties (not their attorneys) "in the manner required for a deed to be recorded", known as an acknowledgment, before a notary public.

**Sunset Clause:** A sunset provision may be inserted into a prenuptial agreement, specifying that after a certain amount of time, the agreement will expire. In a few countries the agreement will automatically lapse after the birth of a child, unless the parties renew the agreement. In some other countries a certain number of years of marriage will cause a prenuptial agreement to lapse.

**Jurisdiction & Choice of Law:** Choice of law provisions are critical in prenups. Parties to the agreement can elect to have the law of the state they are married in govern both the interpretation of the agreement and how property is divided at the time of divorce. In the absence of a choice of law clause it is the law of the place the parties divorce, not the law of the state they were married that decides property and support issues. It may be necessary to retain attorneys in both states to cover the possible eventuality that the parties may live in a state other than the state they were married. Often people have more than one home in different states or they move a lot because of their work so it is important to take that into account in the drafting process.

**Critical Aspects:** There are several ways that a prenuptial agreement can be attacked in court. These include lack of voluntariness, unconscionability, and a failure to disclose assets, these have to be addressed properly in the contract.

### **'Women cannot be self-sacrificing'**

Divorce cases in India often run into several years of courtroom battles over property, assets and maintenance, and women often end up losing out on their rightful share. If the clauses and terms in the contract in connection with the property division and maintenance are clearly spelt out in a legally valid prenup, it could ensure that women get the assets and support they are entitled to without going through lengthy litigation. (Contracts have to be drafted equally to both parties it cannot be one sided)

“On principle, prenups contracts have to bring in equality for women,” But in India, where the tradition of dowry is still pervasive, signing pre-marital contracts could be a bit more complicated. Here, a girl’s family already has a set of social taboos to deal with – they are almost never on equal terms with the groom’s family,” “A bride’s family is not always in a position to choose, so would they be in a position to negotiate an agreement that can provide security to the girl?” and correct the agreements which are one sided??

“Prenups can work if women are smart and concise while writing them,” They must not be self-sacrificing and agree to unequal terms

Prenuptial agreement is more likely to stand the test of Law, if it meets the following conditions:

1. The Agreement should be fair, and duly acknowledged.
2. The Agreement should have attorney certification from both parties as well.
3. The Agreement should have clause stating that if any provision of the agreement is invalidated, the rest of the agreement still remains in effect.
4. There should be listing attached showing each spouse's assets and liabilities.
5. The Agreement should have all the clauses of agreements arrived at between the prospective spouses.
6. The Agreement may also contain the necessary history of proposed alliance.
7. The Agreement should be reviewed by both sides lawyers and duly certified by them.
8. The Agreement should be setting out each party's assets, debts, and property rights before the marriage, settling issues of division of property and of spousal support in the event of marriage breakdown.

It should also include the following key provisions:

1. Separate Property: The agreement will allow the parties to set out the property being brought into the marriage that should remain separate in the event of death or divorce
2. Shared Property: Identifies property that will be shared
3. Division of Property: Sets out how all property will be divided in the event of death or divorce
4. Disclosure of Assets and Liabilities: Gives the couple the opportunity to define each party's assets and debts coming into the marriage. This is an important provision as failure to list all assets and liabilities can actually invalidate the agreement.
5. Alimony, Support and Maintenance: Sets out any payments that will be made

6. Estate Planning/Wills: References the estate plan and/or wills of the couple and identifies what will be included (every couple should have a comprehensive estate plan)
7. Additional Clauses: Provides room for the parties to add additional provisions that they may find important.

With the number of divorce petitions in Bengaluru alone touching 7,000 in 2015, up from around 2,500 in 2005, many are going for prenuptial agreements to ensure things are clear when the marriage is on the rocks, these agreements will work only if the couples stick to the agreement when they decide to split, however prenuptial agreement is yet to be recognised in India as a legal document, the Union ministry for women and child development recently has called for a discussion on the subject with legal experts with the possibility of bringing about a law to legitimize the pact between spouse.

Marriage in India, being an important ritual in every man and women's life and deeply rooted in religious beliefs with traditional thinking that the woman takes care of the child & the house while the man is the provider and while many women are not financially independent, will prenuptial agreements work?? Will women be in a position to negotiate the terms?? Will this ever be legally enforceable?? Will there be an amendment in the marriage laws?? OR will this only be a mere contract under the Contract Act?? ... while we have successfully drafted the contract and the matter is in the advanced stages of negotiation, these questions are still unanswered, which only time will tell.

## Living Room...



# When two woodcutters argued...

One day two woodcutters have argued, which of them will cut more wood during a day.

In the morning two men took up their positions. First they worked at one speed. But in an hour one of them has heard, that the other one stopped cutting trees. Realizing that this was his chance, the first woodcutter started to cut trees with double efforts. Ten minutes passed, and he heard that the second woodcutter started to work again. They were working almost synchronously, when the first woodcutter heard that his opponent has stopped again. The first woodcutter continued working, feeling the smell of victory. This lasted all day long. Each hour one of the woodcutters stopped for ten minutes and the other one continued to work. When time expired, the first woodcutter, who worked without any stopping, was absolutely sure that he won the prize.

He was very surprised to know that was mistaken.

— How did that happen? — He asked his partner. — Each hour I heard that you have stopped the work for ten minutes. How could you cut more trees than I? It's impossible!

— It is very simple, in fact, — answered the second woodcutter. — Each hour I stopped the work for ten minutes. And when you were cutting the trees, I sharpened the axe.



## Words worth Millions!

**I find that the harder I work, the more luck I seem to have** - Thomas Jefferson  
**Try not to become a man of success. Rather become a man of value** - Albert Einstein





## Applicability of Labour Laws to IT / ITES industry

Recently there were two news items from the State of Tamil Nadu pertaining to Human Resources Management:

1. Re-instatement of an IT Professional basically a software engineer who was discharged from the services of M/s. HCL Limited citing non-performance as reason – Judgment was delivered by one of the Hon'ble Labour Court of Tamil Nadu.
2. Clarification given by Principal Secretary to the Government of Tamil Nadu on application of labour laws to IT / ITES industry – in response to public interest litigation petition filed in High Court of Tamil Nadu w.r.t dispensation of services of IT / ITES professionals by Tata Consultancy Services (TCS).

On the aforementioned two points, there was **great & a detailed debate** by learned HR Professionals and Industry stalwart's w.r.t fate of growth and development specifically for IT/ITES/Science & Technology (**S&T**) / R&D/BT/Gaming Companies if the labour laws are made applicable to the said industries.

**Basis these debate & deliberation, the basic questions framed were:**

1. *Are labour laws applicable to IT/ITES/S&T/R&D/BT/Gaming Companies?*
2. *With the above notification does it mean that the labour laws are now made applicable to IT/ITES/S&T/R&D/BT/Gaming Companies? If yes, is it only to the State of T Tamil Nadu?*
3. *If there is exemption from application of Industrial Employment (Standing Orders) Act, 1946 & Rules, is it not an exemption from the application of labour laws to the said industries?*

**The above questions framed should be categorically answered with crystal clear understanding of the legislation governing Human Resources Management and its application;**

1. Basic understanding of the application of labour laws is to first determine whether there is Master – Servant relationship (Employer & Employee) – If yes, prima facie the labour laws are applicable.
2. Next, one should understand whether the system in which master – servant relationship is carried out get qualified under the term “Industry”, if yes, then labour laws are in fact applicable.
3. Be it IT or Non-IT industry, labour laws were & are very much applicable from day one. In some states, Government had / has exempted from the application of Industrial Employment (Standing Orders), 1946. This means that in such states the said industries are exempted to the extent specified & not from the very application of the labour laws.
4. Even, if Industrial Employment (SO's) Act, 1946 is not applicable in certain States, yet other labour legislations such as Industrial Disputes Act, 1947, Trade Unions Act, 1926, EPF & MP Act, 1952, ESI Act, 1947, Payment of Bonus Act, 1965, Payment of Wages Act, 1936, Minimum Wages, Act, 1948, Payment of Gratuity Act, 1972, Contract Labour (R&A) Act, 1970, Maternity Benefits Act, 1961, Child Labour (Prohibition & Regulation) Act, 1986 & Respective States Shops & Commercial Establishments Act etc. are applicable.

**To be very specific to answer the question above framed;**

- A. Labour laws are very much applicable to IT/ITES/S&T/R&D/BT/Gaming Companies – they are not exempted.

- B. The notification from the Government of Tamilnadu, only reiterates the application of labour laws on the said industries – therefore, no need for any deliberations considering this as new development.
- C. Labour laws to IT/ITES/S&T/R&D/BT/Gaming Companies are applicable across India, except under certain legislations, State of Jammu & Kashmir is exempted from its application.
- D. Exemption from Standing Orders laws should not be misunderstood to mean exemption from labour laws.

### **Some of the myths w.r.t formation of Trade Unions & right to do so in IT/ITES/S&T/R&D/BT/Gaming Companies;**

Some of our professionals have an understanding that only workman working in factories can form a union. It is a myth, reason for the same is as detailed below;

1. Any seven employees of any industrial organization can form a Trade Union.
2. Such unions can be between Employer & Employee or Employer & Workman or Employer & Employer or Workman & Workman.
3. Even an MD / CEO / COO rank officials in an Organization can form a Trade Union.
4. In fact, right to form an union is a fundamental right enshrined under Part – III of Article 19(1)(C) of Indian Constitution. However, it is subject to reasonable restriction.
5. Here it may be noted that formation of Union does not guarantee the right to be recognized or right to go for collective bargaining or Strike or Lockout.

### **Converse Theories for application of labour laws to IT/ITES/S&T/R&D/BT/Gaming Companies;**

1. It is always argued by the Industry Stalwarts that Indian Labour Laws are a hindering factor for the growth & success story of the said industries for the simple reasons that they are **archaic & not in line with the rapidly changing disruptive business world & most importantly, employer does not have flexibility in hiring & dispensing the services of the employees**. In short not meeting the expectations of “Volatile, Uncertain, Complex & Ambiguous - **VUCA**” world.
2. As a HR professional being an employment & general law counsel too, I also find that our Indian Labour laws in some areas are not meeting the requirements of new set of industries like IT/ITES/S&R/R&D/BT/Gaming Companies.
3. People like co-founder of Infosys Mr. Mohandas Pai, makes a statement that for an IT / ITES & Technology based industries, where attrition is more than 20%, the labour laws relevance has least implications or its application may hinder the growth of IT / ITES & Technology based industry sector.
4. If this is the premise, so far, we have not seen any of such Industry stalwarts or any such industries voluntary organization such as NASCCOM which has made any proposal / request / any recommendation to either Union Government or State Governments to craft a separate legislation governing employer – employee relationship specifically for IT/ITES/S&T/R&D/BT/Gaming & other Technology Companies which can boost its growth & development.
5. **All that these stalwarts and their voluntary Organisations done is always claim for an exemption from the application of the Standing Orders Act and labour laws**. On every occasion, they take a shield under the guise of Foreign Direct Investment (FDI), Generation of Foreign Exchange, Creation of Employment opportunities etc. for exempting them from the application of labour laws.
6. In Country like India & most of the Asia Specific Countries, we need to have balanced approach to meet the motives of both Socialistic & Capitalistic ideologies. This means, there is need for sufficient protection to the capital invested by the capitalist and adequate social security to the human resources who invest their flesh & blood. Only then, there could be balanced & sustainable socio-economic growth failing which will only lead to such meaningless deliberations & debates.

At-least now there should be pressing need expressed to come up with specific code governing the employer – employee relationship in these sectors rather than just trying to play opportunistic politics in the name of growth or labour laws are deterrent to the growth of these industries.



**Manjunath S. Bhat**, M.Com, LLB  
CS Professional Student, Bengaluru  
[msbhat321@gmail.com](mailto:msbhat321@gmail.com)

# e-Tools for the Professionals

## Cisco WebEx Meetings

An Android/IOS/Blackberry application for Smart Phones and Tabs



Cisco WebEx Meetings is an Android/IOS/Blackberry based application for Smart Phones and Tabs which can be of great use for web meetings anywhere. Through this app we can join any web conference or meeting from any corner of the world. Application allows us to share the documents to the meeting space through phone/tab. Service is currently available in few countries and app requires certain hardware requirement in the device in which it is running. Application comes with 16 languages (version 9.1) and an end to end encryption support.

### Specification:

1. Price- Free
2. Required Android- 4.1 and up

Download Cisco WebEx Meetings app here: <https://play.google.com/store/apps/details?id=com.cisco.webex.meetings&hl=en>

## Web Yatra [www.lexology.com](http://www.lexology.com)

“Articles are a special part of speech and abbreviated ART”

**Guruprasada Bhat**, B.B.A, ACS (Professional)  
Lead – Consultant, N R Desai & Associates  
[guruprasadbhatcs@gmail.com](mailto:guruprasadbhatcs@gmail.com)



# LEXOLOGY.

Dear professional colleagues...!!! This time we come up with a wonderful website consisting of well weighted articles in the fields of company law and other allied laws throughout the world i.e., <http://www.lexology.com/>.

The word “LEXOLOGY” stands for, an innovative, web-based service that provides company law departments and law firms with a depth of free practical know-how that would be impossible to produce internally.

This <http://www.lexology.com/> consists of more than 45000 articles in more than 20 languages covering 50 work areas worldwide. Also Lexology is a powerful research platform. It contains not only the company law and also other fields like Agriculture, Aviation, Capital Market, IPR, M&A, and Tax and so on.

By registering yourself you can get the access to the treasury of information inside Lexology. In this site, we can choose our preferences and interested areas the information and update of which we wish to receive regularly. If you are keen to receive the newsletter, please log on to <http://www.lexology.com/account/register.aspx>.

Nothing more to say, read this testimonial given by one of the Company secretaries from United Kingdom on this site: “As a Company Secretary, I find these articles very useful and appropriate and also share them with the lawyers and paralegals in the department”. Brigitte Zaza, Company Secretary. Visit the site and let us know your thoughts!



# News Room



CS Chakri Hegde  
[chakri.hegde@gmail.com](mailto:chakri.hegde@gmail.com)



CS Vijayalakshmi Karur  
[vijukarur@gmail.com](mailto:vijukarur@gmail.com)

## NEWS EXPRESS

- Government plans to amend SEBI Act for more Members, Benches of SAT, To help expedite cases related to securities markets
- Coca-Cola faces case under SC/ST Act in Kerala for allegedly exploiting and polluting groundwater sources of the backward Scheduled Caste community
- ED, IT to probe at least 25 exporter from Haryana & Punjab in multi-crore scam in export of Basmati rice
- Infosys Launches Mana™ – a Knowledge-based Artificial Intelligence Platform
- Banks and Financial Institutions may have a separate Insolvency Code – Finance Ministry

## Government plans to scrap four SPVs set up For UMPPS due to lack of interest from host states

The government plans to scrap four special purpose vehicles (SPVs) set up for ultra mega power plants (UMPP) in Chhattisgarh, Karnataka, Maharashtra and Odisha due to lack of interest from the host states.

## Government approves Capital Goods Policy, Aims 21-million new jobs

The Cabinet has approved a first ever national capital goods policy that seeks to reduce reliance on imported equipment by giving incentives to domestic production and in the process creating crores of jobs.

## Brokerages face SEBI fire in NSEL Scam

SEBI has recommended a forensic audit of brokerage houses (which include Anand Rathi Commodities, India Infoline Commodities etc) whose clients lost significant amounts of money in the Rs 5,574-crore National Spot Exchange Ltd (NSEL) scam.

## SEBI asks Depositories to credit 5 per cent profit to Investor Fund

SEBI has asked the depositories to deposit 5 per cent of their annual profits, as also the fines collected by them from brokers and other entities, in an Investor Protection Fund (IPF).

## EPFO may soon allow members to contribute for Pension Scheme

Retirement fund body EPFO may soon allow its subscribers to contribute voluntarily towards its pension scheme in addition to their employers' mandatory contributions. At present, an employer contributes 8.33 per cent of basic wages of Rs 15,000 per month towards to the Employees' Pension Scheme 1995.

## Government to impose antidumping duty on Chinese chemical

India is likely to impose anti-dumping duty of USD 1.22 per kg on import of a chemical. (Deccan Chronical)

## Japan may seek WTO help to resolve India steel tariff dispute

Japan said it may ask the World Trade Organization to help resolve a dispute related to India's "safeguard" tariffs on the import of hot-rolled steel. (Business Line)

## India to submit Facilitation Agreement (TFA) in services to WTO

The objective of the proposed TFA in Services is to ease the flow of global services trade, including temporary movement of software, accounting, medical and consulting professionals as well as similar skilled workers. (Business Line)



## Stock Appreciation Rights

Stock Appreciation Rights (SAR) is a right, usually granted to an employee to monetise the benefits of Company's performance and increase in stock price. SAR is similar to 'Employees Stock Options' where the employee receives a bonus equivalent to the appreciation of Company's Stock over a period; the difference is that the employee is not required to pay the exercise price. SARs can often be exercised any time after they vest. These rights are similar to phantom stocks wherein the actual stocks are not granted and are generally paid out either in cash or in stocks. Unlike Stock Options, SARs may not have a specific settlement date, the employees may have flexibility in when to choose to exercise the SAR and they shall not carry the dividend rights. With regards to accounting of SAR, the amount of the liability changes each year, an entry is made for the amount accrued. A decline in value would create a negative entry. These entries are not contingent on vesting.

In India, a Survey conducted by ESOP Direct in year 2014 reveals that only 10% Companies have adopted instruments including Equity settled and Cash settled SARs. Most of the companies who implemented Instruments other than ESOPs said that the reason was either to manage equity dilution and/ or accounting charge.

Did  
You  
Know?

## New Tags for World Economies

With the publication of 2016 edition of 'World Development Indicators (WDI)' by The World Bank, distinction between the developing and the developed countries has been phased out. Instead, the countries are now classified on the basis of income level and geographical coverage. The Bank's logic behind the change is that the world economies are becoming less and less homogenous and the term 'developing world' is becoming less relevant. For instance, Mexico, China and Brazil are 'upper-middle income'; India, Pakistan, and Bangladesh are 'lower-middle income'; while 'Malawi' is, understandably, a notch lower at 'low income'. So far, all of these were 'developing countries'. Accordingly, as per 2016 WDI – India is categorised under 'Lower Middle Income Country / South Asia' category.

## Stamping of Share Transfer Forms

As per Section 56 of the Companies Act, 2013, the Company shall not register the Share Transfer Form unless it is properly stamped, dated & executed. All the Share Transfer forms should be executed and stamped before the date of Board Meeting. Any resolution passed approving such unstamped transfer forms shall be invalid and the transfer shall not be effective. Hence, the stamping of share transfer forms shall always be before the date of Board Meeting.



Pick of  
the  
month

# Regulatory Updates

Compiled by:

**CS Abhishek Bharadwaj A.B.**  
Partner, AAA & Co, Bengaluru  
[csabhishekbharadwaj@gmail.com](mailto:csabhishekbharadwaj@gmail.com)



## CUSTOMS & FTP

### Notifications/Circulars/News

The Central Government, in the Budget 2016 announcements, proposed to amend the Customs Law to provide a shift from physical control of Customs Bonded Warehouses (CBW) to record-based control with sophisticated IT systems. In line with its proposals, the Central Government has now issued specified Regulations for licensing and operationalisation of various kinds of CBWs. A brief overview of these Regulations is given below:

-Warehouse Goods (Removal) Regulation, 2016: This Regulation governs the procedure and requirements for movement of goods from one CBW to another CBW, or from customs station to CBW.

-Warehouse (Custody and Handling of Goods) Regulations, 2016: This Regulation governs the procedures to be followed at the time of receipt/ removal of goods in/ from CBW and records to be maintained at CBW.

-Special Warehouse (Custom and Handling of Goods) Regulations, 2016: This Regulation governs the procedures to be followed at the time of receipt/ removal of goods from Special Warehouse, and records to be maintained in a Special Warehouse. The Special Warehouse shall be used for specified goods such as gold, silver, other precious metals and goods meant for supplies to Duty Free Shops (DFS).

-Public Warehouse Licensing Regulations, 2016: This Regulation governs requirement for obtaining a Public Warehouse License.

-Private Warehousing Licensing Regulations, 2016: This Regulation governs requirement for obtaining a Private Warehouse License.

-Special Warehouse Licensing Regulations, 2016: This Regulation governs requirement for obtaining a Special Warehouse License.

[No. 66/2016-Customs \(NT\) to Notification No. 72/2016-Customs \(NT\), dated 14 May, 2016](#)

The Central Government, amongst other things, has clarified that DFS cannot be licensed as a "warehouse" either under existing Rules or under the new Rules, since it is not able to fulfil CBW requirements. - [No. 20/2016-Customs, dated 20 May, 2016](#)

### Case Law

The Chennai Tribunal held that consumer electronics PC with additional components of audio, video, multimedia etc. was classifiable under CTH 84713010 as Automated Data Processing (ADP) machine since its principal function was that of an ADP machine.

[CC v HCL Info Systems Ltd \(2016 \(335\) ELT 190\)](#)

The Chennai Tribunal held that 'Paddle wheel aerators and parts thereof for use in aquaculture' were classifiable under CTH 8536 as agricultural equipment since, as per Ministry of Agriculture, aqua farming is an integral part of agriculture.

[SuyogAgro Poultry Products\(P\) Ltd. v CC \(2016 \(335\) ELT 350\)](#)

The Mumbai Tribunal held that royalty related to manufacture of goods in India was not includible in the value of imported raw

material if there was no restriction in the import agreement to purchase raw material necessarily from related overseas supplier.  
[Rhône Poulenc \(I\) Ltd vCC \(2016 \(335\) ELT 122\)](#)

The Delhi High Court held that amendment of Bill of Entry was permissible even after clearance of goods, provided that the amendment was based on documentary evidence which existed at the time of clearance of goods, and exemption notification was clearly a document present at the time of import.

[MohitOverseas vCC \(2016 \(335\) ELT 18\)](#)

The Chennai Tribunal held that the authorities had to act only within the parameters of law and had to carry out the object of the statute without imposing any extraneous grounds not known to law. The Tribunal held that refund of Additional Duty of Customs (ADC) could not be denied due to non-submission of board resolution and, Chartered Accountant (CA) appointment letter, for grant of refund.

[Becton Dickinson India Pvt Ltd vCC \(2016-TIOL-1111-CESTAT-MAD\)](#)

The Bangalore Tribunal held that in case of refund of differential duty, CA certificate was good evidence to prove that the duty burden had not been passed on to the customer, and allegation of unjust enrichment could not be upheld.

[TrimulaBearings \(P\) Ltd v CC \(Appeals\) \(2016 \(335\) ELT 145\)](#)

The Supreme Court held that when excise duty was exempt, there was no question of payment of ADC on ship imported for breaking in India.

[Union of India v EngeelIndustrial ServicesCo. Ltd \(2016 \(335\) ELT 197 \(SC\)\)](#)

The Mumbai Tribunal held that importer was liable to pay applicable duty on imported platinum found short in excess of prescribe wastage norms. Further, it was also held that when goods were not available for confiscation, then redemption fine could not be imposed.

[CC vs.B & T. International Ltd. \(2016 \(335\) ELT 83\)](#)

The Mumbai Tribunal held that for the purpose of exemption notification, a genuine description of product would cover all variants of such product. Accordingly, the Entry referring to 'Laser Drilling Machines' under the exemption notification, would also cover CNC-based Laser Drilling Machines having multi-function capabilities of sawing, kerfing and drilling.

[S. Narendra vCC \(2016 \(335\) ELT 172\)](#)

## Ministry of Corporate Affairs

### Notifications/Circulars/News

In continuation to this Ministry's General Circular 01 of 2016 dated 12.01.2016, it is clarified that companies, while undertaking Corporate Social Responsibility activities under provision of the Companies Act, 2013, shall not contravene any other prevailing laws of the land including Cigarettes and Other Tobacco Products Act (COTPA), 2003.

[General Circular No.05/2016 dated 16th May 2016](#)

In continuation of this Ministry's General Circular No.03/2016 dated 12.04.2016, keeping in view of requests received from various stakeholders, it has been decided to extend the period for which the one time waiver of additional fees is applicable to all e-forms which are due for filing by companies between the 25th March 2016 upto 31st May 2016 as well as extend the last date for filing such documents and availing the benefit of waiver to 10.06.2016.

*General Circular No 06/2016 dated 16th May 2016*

In the Companies (Corporate Social Responsibility Policy) Rules, 2014, in rule 4, for sub-rule (2), the following sub-rule shall be substituted, namely:—

"(2) The Board of a company may decide to undertake its CSR activities approved by the CSR Committee, through

(a) a company established under section 8 of the Act or a registered trust or a registered society, established by the company, either singly or alongwith any other company, or

(b) a company established under section 8 of the Act or a registered trust or a registered society, established by the Central Government or State Government or any entity established under an Act of Parliament or a State legislature : Provided that if, the Board of a company decides to undertake its CSR activities through a company established under section 8 of the Act or a registered trust or a registered society, other than those specified in this sub-rule, such company or trust or society shall have an established track record of three years in undertaking similar programs or projects; and the company has specified the projects or programs to be undertaken, the modalities of utilisation of funds of such projects and programs and the monitoring and reporting mechanism".

*Companies (Corporate Social Responsibility Policy) Amendment Rules, 2016 GSR 540(E) dated 23rd May 2016*

In exercise of the powers conferred by section 408 of the Companies Act, 2013 (18 of 2013), the Central Government hereby constitutes the National Company Law Tribunal to exercise and discharge the powers and functions as are, or may be, conferred on it by or under the said Act with effect from the 1st day of June, 2016.

*S.O. 1932(E) dated 1st June 2016*

In exercise of the powers conferred by section 410 of the Companies Act, 2013 (18 of 2013), the Central Government hereby constitutes the National Company Law Appellate Tribunal for hearing appeals against the orders of the National Company Law Tribunal with effect from the 1st day of June, 2016.

*S.O. 1933(E) dated 1st June 2016*

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 1st day of June, 2016 as the date on which the following provisions of the said Act shall come into force, namely

1. Sub-section (7) of section 7 [except clause (c) and (d)] 2. Second proviso to sub-section (1) of section 14 3. Sub-section (2) of section 14 4. Sub-section (3) of section 55 5. Proviso to Clause (b) of sub-section (1) of section 61 6. Sub-sections (4) to (6) of section 62 7. Sub-sections (9) to (11) of section 71 8. Section 75 9. Section 97 10. Section 98 11. Section 99 12. Sub-section (4) of section 119 13. Section 130 14. Section 131 15. Second proviso to sub-section (4) and sub-section (5) of section 140 16. Sub-section (4) of section 169 17. Section 213 18. Sub-section (2) of Section 216 19. Section 218 20. Section 221 21. Section 222 22. Sub-section (5) of section 224 23. Sections 241, 242 [except clause (b)

of sub-section (1), clause (c) & (g) of sub-section (2)], 243, 244, and 245 24. Reference of word 'Tribunal' in sub-section (2) of section 399 25. Sections 415 to 433 (both inclusive) 26. Sub-section (1)(a) and (b) of section 434 27. Sub-section (2) of section 434 28. Section 441 29. Section 466

*S.O. 1934(E) dated 1st June 2016*

## CENVAT

### Notifications/Circulars

The CBEC has clarified that clearance of segregated foreign materials, namely, iron, steel, rubber, plastic, dust etc. from honey grade brass scrap before feeding into furnace cannot be treated as removal of "inputs as such"; the same should be cleared on payment of Central Excise duty on transaction value.

*No. 1029/17/2016 -CX dated 10 May, 2016*

### Case Law

The Mumbai Tribunal held that cost of additional testing and documentation charges collected from a customer for their own quality control test, being undertaken at the request of customers, was not includible in the assessable value.

*Bharat Bijlee Ltd vCCE (2016-TIOL-495-CESTAT-MUM)*

The Delhi Tribunal held that valuation of physiciansamples distributed free of cost had to be done on cost of production basis, and not under MRP-based assessment.

*CCE vLupinLtd (2016-TIOL-412-CESTAT-DEL)*

The Mumbai Tribunal held that 50% of the advertisement cost recovered from dealers was not includible in the assessable value, since such sharing of cost was optional in nature.

*RathiTranspowerPvt Ltd vCCE (2016-TIOL-577-CESTAT-MUM)*

The Mumbai Tribunal held that integration/ commissioning charges were post-clearance expenses, and that the same would not form part of the assessable value of the goods.

*Petals Engineers Pvt Ltd vCCE (2016-TIOL-643-CESTAT-MUM)*

The Bombay High Court held that demand for reversal of credit on inputs removed 'as such' to sister-unit was not sustainable on the ground of revenue neutrality inasmuch as the assessee had not derived any substantive benefit, since the sister-unit was eligible to avail credit.

*CCCE & ST vTarapurGrease India PvtLtd (2016 (334) ELT 416)*

The Mumbai Tribunal held that bought-out wire supplied along with transmission tower was an accessory, eligible for credit as 'input' under Rule 2(k) when value of such wire was included in the assessable value and duty had been paid on the whole amount.

*CCE v KEC International Ltd (2016-TIOL-424-CESTAT-MUM)*

The Kolkata Tribunal held that CENVAT credit was admissible on mouldsdirectly sent to the job workers' premises without bringing the same into the factory, irrespective of whether such mouldswould be returned or not, since such mouldsmay be consumed in the job workers' premises.

*AbdosOil PvtLtd vCCE (2016-TIOL-542-CESTAT-KOL)*

The Mumbai Tribunal held that goods cleared without payment of duty on the basis of CT 2 certificate could not be termed as exempted clearance, and consequently, demand of 8% / 10% of the value of such goods was not sustainable in law.

*Tristar Equipment PvtLtd vCCE (2016-TIOL-447-CESTAT-MUM)*

The Allahabad Tribunal held that credit was admissible on steel items used in fabrication of biogas plant, which was a pollution control equipment.

*Bajaj HindusthanLtd vCCE (2016-TIOL-774-CESTAT-ALL)*

The Mumbai Tribunal held that endorsed bill of entry was a valid document for availing CENVAT credit.

*SuyashChemicals vCCE (2016-TIOL-476-CESTAT-MUM)*

The Tribunals held that the refund of unutilized credit under Rule 5 was admissible on clearance made to SEZ unit.

*Polaris Cables & Wires PvtLtd vCCE (2016-TIOL-586-CESTAT-MUM) & RR Donnelley Publishing India PvtLtd v CCE (2016-TIOL-527-CESTAT-MAD)*

The Ahmedabad Tribunal held that time limit of 6 months from the date of invoice under the erstwhile MODVAT rules would be applied to receipt of goods in factory, and not to the process of taking credit, and hence, delay in availing credit for the reason that the invoices were sent for some rectification, did not debar the claim of credit on such invoice.

*EleconEngineering Co Ltd vCCCE & ST (2016-TIOL-452-CESTAT-AHM)*

## GST (VAT, Sales Tax and Entry Tax)

### Case Laws

The Delhi High Court held that issue of C forms to dealers towards concessional central sales tax on inter-state purchases could not be denied on the ground that inter-state purchases were not reported in the revised returns due to genuine mistake by the dealer. The HC observed that the inter-state purchases claimed by the dealer were genuine, with no adverse impact on the revenue of the State.

*Ingram Micro India PvtLtd v Commissioner, Department of Trade & Taxes [TS-192-HC-2016(DEL)-VAT]*

The Supreme Court held that foundation/ installation work in respect of setting up of wind mills was not liable to sales tax. The SC observed that even if foundation/ installation work did not fall under the term, 'wind mill' for which exemption was available, the same could not be treated as goods liable to sales tax.

*M/s. Enercon(India) Ltd v State of Karnataka [TS-173-SC-2016-VAT]*

## Service Tax

### Notifications/Circulars

It has been clarified that service tax liability for services provided by an arbitral tribunal (including the individual arbitrators of the tribunal) shall be on the service recipient, if it is a business entity located in the taxable territory with a turnover exceeding rupees ten lakh in the preceding financial year.

*No. 193/03/2016-Service Tax dated 18 May, 2016*

KKC is exempted where the services are exempted from service tax, or are not subject to service tax. It is further provided that abatement from levy of KKC equal to abatement available for service tax would be available. It is also clarified that the value of taxable services for calculation of KKC would be the value computed in terms of the Valuation Rules.

*No. 28/2016-Service Tax dated 26 May, 2016*

Rebate is allowed of KKC paid on input services used for providing output services which are exported.

*No. 29/2016-Service Tax dated 26 May, 2016*

KKC paid on input services received and used by SEZ units and developers is available as refund.

*No. 30/2016-Service Tax dated 26 May, 2016*

In case of services provided by an air travel agent, life insurer, person purchasing or selling foreign exchange or a distributor or selling agent of lottery, where the service tax rules provide for an alternative mechanism to compute service tax liability, such persons can compute and pay KKC as under:

$\frac{\text{Amount payable as service tax} \times \text{effective KKC rate}}{\text{Rate of service tax specified in S.66B}}$
---

The rule giving option for payment of SwachhBharat Cess on similar lines has been amended to bring the language of both rules on par.

*No. 31/2016-Service Tax dated 26 May, 2016*

CENVAT credit of KKC paid on input services is allowed to a service provider. The notification further provides that CENVAT credit of any other duty will not be allowed to be utilised for payment of KKC, and CENVAT credit of KKC paid on input services can be utilised for payment of KKC on output services.

*No. 28/2016-Central Excise (N.T.) dated 26 May, 2016*

### Case Laws

The authority for advance rulings held that in case of revenue sharing arrangements for jointly providing services to third parties, service tax was applicable on the respective revenue share of both parties on the basis of the activities carried out, and also on the revenue earned from third parties.

*Re Choice Estates and Constructions Ltd. (TS-195-AAR-2016-ST)*

The authority for advance rulings held that volume discount received by the advertisement agency from media houses was not liable to service tax, as there was no service provided by the advertisement agency to the media house.

*Re AKQA Media India Private Ltd. (TS-194-AAR-2016-ST)*

The Supreme Court held that supply of labour for working in packing plant could not be considered as cargo handling services.

*The Deputy Commissioner, Central Excise vSushil & Company (TS-197-SC-2016-ST)*

The Mumbai Tribunal held that initially claiming CENVAT credit which was later reversed does not jeopardise the availability of abatement, which is available only if no CENVAT credit is claimed.

*Detect Electronics v CCE(2016-TIOL-1274--CESTAT-MUM)*

The Mumbai Tribunal held that issue of credit notes to customers was sufficient to prove that there was no unjust enrichment.

*Edelweiss Securities Ltd vCST (2016-TIOL-1214-CESTAT-MUM)*

The Mumbai Tribunal held that if an amount paid to an individual was treated as salary by the income tax department, it could not be held by the service tax department as amount paid for consultancy charges and service tax demanded on the same.

*RentworksIndia Pvt Ltd v CCE(2016*