

CS NEWS
Connecting
Statutes
2017



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2017 – “The year of Transparency”. Substance or Form
Initiative by J Sundharesan

Topics	Page No.
POSH – Are there any Shades of GREY	3
Heads Up on events that led to Heads Turn in December 2017	4-9
Corporate Development Judicial –	
➤ Shailesh Prabhudas Mehta v. Calico Dyeing & Printing Mills Ltd [SC]	10
➤ State of Maharashtra v. Reliance Industries Ltd. & ORS [SC]	10
From the Government –	
➤ Delegation of powers and functions by Central Government to IBBI.	11
➤ Relaxation of additional fees and extension of last date of filing of AOC- 4 XBRL E Forms using Ind AS under the Companies Act, 2013 - reg.	11
Save our Earth –	
➤ Edible Water bottles	12
Updates –	
➤ MCA Updates	13
➤ FEMA updates	13

“Do not judge a Company by its Governance.”

POSH - SHADES OF GREY

The Picture on the cover page denotes freedom for women at workplace which is attributable to one of the best legislations enacted thus far which is “**The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH).**”

Few months back we had published an article in black and white on **POSH**.

This month we are providing some probing questions in POSH that may have “Shades of Grey” and do we have answers.

- 1) What is considered Sexual Harassment at work place? And how does it differ from Non-Sexual Harassment?
- 2) Can a Sexual Harassment that occur outside the work site, be considered work related?
- 3) Is it always necessary that in order for an act to be determined sexual harassment, the victim has to be of the opposite sex of the harasser?
- 4) Is Sexual harassment limited to only physical contact and only limited to women’s issue?
- 5) Whether dirty jokes and language are construed as sexual harassment?
- 6) Whether a man who is sexually harassed have the same legal rights as a woman?
- 7) Is it required to make the “Incidents of harassment” public, within the organization to keep employees informed?
- 8) Whether friendly flirting is a Sexual Harassment?
- 9) Whether Police can take action against the accused on Suo-moto basis?
- 10) The Committee should Investigate or Resolve an issue?

“Do not judge a Company by its Governance.”

HEADS UP ON EVENTS THAT LED TO HEADS TURN IN NOVEMBER 2017**MNCs will have to furnish extra disclosures from March 2018**

Multinational companies operating in India will have to furnish additional disclosures from March 2018 in line with international principles adopted at the multilateral Organisation for Economic Cooperation and Development (OECD) to prevent tax evasion. The Central Board of Direct Taxes (CBDT), the apex direct taxes body, has notified the final rules for MNCs to comply with country-by-country reporting norm. These deal with maintaining and furnishing of transfer pricing documentation in the Master File and Country-by-Country report (CbCR).

The government had inserted Section 286 in Income-tax Act, 1961 vide Finance Act, 2016 for furnishing of a country-by-country report in respect of an international group by its constituent or parent entity. "Since it is the first reporting year for furnishing of the country-by-country report, the due date for filing the country-by-country report for reportable accounting year 2016-17 has already been extended to March 31, 2018.... Similarly, the date of compliance for furnishing the Master File for FY 2016-17 has been extended to March 31, 2018 as a one-time relief measure," CBDT said in a statement on Wednesday. Country-by-country reporting norms are in keeping with India's commitment to implement OECD's base erosion and profit shifting or BEPS project.

MNCs will need to provide aggregate information annually, in each jurisdiction where they do business, relating to the global allocation of income and taxes paid, together with other indicators of the location of economic activity within the group. It will also cover information about which entities do business in a particular jurisdiction and the business activities each entity engages in. The threshold for the country-by-country report is total consolidated group revenue of Rs 5,500 crore. The threshold for the master file is consolidated group revenue of Rs 500 crore. Tax experts said the notification of the final rules denotes increased focus of Indian tax authorities on tax transparency and ensuring that the outcomes of transfer pricing policies are in line with value creation linked to Indian operations. "The notification of CbCR rules is likely to usher in a rigorous regime of compliance and disclosure for foreign MNCs working in India," said Amit Agarwal, partner- transfer pricing, Nangia & Co LLP.

"Do not judge a Company by its Governance."

Mobile-Aadhaar link must by Feb 6, says Centre

Citing an order passed by the Supreme Court, the Centre told the apex court on Thursday that all subscribers had to link their mobile phone numbers with Aadhaar by February 6 under E-KYC verification and production of Aadhaar proof was mandatory for opening new bank accounts. The Centre's new affidavit, running into 113 pages and filed through advocate Zoheb Hossain, said it was the SC which had approved the norm for mandatory Aadhaar-mobile phone linkage in the Lokniti Foundation case on February 6 with a window of one year. The government also asserted that no starvation death had taken place anywhere because of anyone not having Aadhaar. The deadline for linkage of Aadhaar with mobile phone number cannot be modified by the government unilaterally (as it is fixed by the SC)," the Centre said, adding that it has decided to extend the deadline for linking Aadhaar with existing bank accounts till March 31. The assertion acquires significance considering that while hearing a separate petition on Monday challenging the mandatory linking of mobile phones with Aadhaar, a two-judge bench of the SC had sought the government's response in next four weeks. A Constitution bench will hear a bunch of petitions challenging the validity of Aadhaar on the ground that it violated citizens' right to privacy. In its fresh affidavit, the Centre said: "Until March 31, existing bank accounts will not be made non-operational for not linking with Aadhaar. But as far as opening new bank accounts are concerned, Aadhaar or enrolment ID must be given as proof of identity. For existing account holders, the deadline for Aadhaarbased verification is being extended to March 31 and no coercive action will be taken till then." Like the Aadhaar-mobile phone linkage, the SC had validated the Centre's decision for mandatory linking of Aadhaar with PAN or filing of income tax returns, it said, adding that the court had given partial relief to "those who do not have Aadhaar and who do not obtain Aadhaar for the time being, that their PAN will not be deemed to be invalid" for this financial year. The Centre cited several major cyberattacks and hackings in the recent past that affected many countries and said, "There has not been a single instance of hacking or data breach in or from UIDAI or any of its servers." Quoting a TOI report of July 22 headlined 'One cybercrime in India every 10 minutes', the Centre said the incidents of cybercrime and hacking showed that such instances were rampant with or without Aadhaar.

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Tech Mahindra withdraws insolvency case against Reliance Communications from NCLT

Software firm Tech MahindraBSE -4.34 % (TechM) has withdrawn its insolvency case against Reliance CommunicationsBSE 2.06 % (RCom) from the National Company Law Tribunal (NCLT) in favour of a mutual, out-of-court settlement. A similar out of court settlement with equipment maker Ericsson appears tougher to pull together for RCom as the dues to the Swedish company — Rs 1,150 crore — are way higher than what RCom owes TechM — Rs 8.2 crore, said people familiar with the matter. The hearing to decide if Ericsson’s similar plea should be accepted in NCLT is scheduled for November 9. Tech Mahindra’s withdrawal on Thursday brought relief for RCom, which is reeling under Rs 45,000 crore debt and is on verge of shutting a major part of its wireless operations. “We withdraw the matter as the parties are exploring settlement,” said Abhishek Adke, counsel representing TechM to the bench comprising Justices BSV Prakash Kumar and V Nallasenapathy on Thursday. RCom didn’t respond to an email seeking comments. RCom shares closed at Rs 17.35, up 2.06% on the BSE on Thursday.

TechM had last month filed a petition for recovery of Rs 8.2 crore from the Anil Ambani-owned telco and its two units. NCLT was to decide on Thursday if the petition filed by TechM was be accepted by the tribunal or not. “No consensus has been reached yet and both parties are exploring remedies. The amount is not a large one so partial payment is ruled out,” said another person familiar with the development. Under an insolvency petition, the tribunal can initiate takeover of the company or even liquidation to settle debt. RCom had said earlier in a regulatory filing the quality of service and amounts billed are disputed and termed the petitions as “misconceived, premature and motivated by extraneous considerations.”

The Anil Ambani company had then said, “the claim amount is not considered material by the respective companies concerned.” While Rcom is set for a settlement with TechM, the one with Ericsson is a tougher. “The amount claimed by Ericsson is large and now that the earlier talks have failed, the matter will be dragged to courts,” said one of the people. In September, Ericsson filed for insolvency in the NCLT to recover Rs 1,150 crore from RCom for services and equipment supplied. Negotiations between the two to reach an out-of-court settlement have failed so far.

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Ericsson did not respond to a query ET sent on the issue. RCom currently is going through strategic debt restructuring (SDR). The telecom company said on Monday that it has presented a fresh “zero write-off” plan to its lenders.

ET in the classroom: Linking Aadhaar to your mutual funds

As per recent amendments to Prevention of Money Laundering Act (PMLA) Rules, 2017, Financial Institutions dealing with mutual funds are mandated to obtain Aadhaar number from their customers and link the same to the respective accounts. For the sake of convenience mutual fund registrars namely CAMS, Karvy, Franklin Templeton and Sundaram BNP Paribas are facilitating the process of linking your Aadhaar information in Mutual Funds serviced by them where you have investments. **How do I link my Aadhaar number to my mutual fund investments?** To link your mutual fund investment to your Aadhaar, you need not go to each fund house individually, or do it with each fund house. You can complete the task at the registrar level. If you have investments in two or more fund houses which are serviced by the same registrar, you need to update your Aadhaar only once with the registrar. Similarly if your investments are serviced by more than two registrars, you will have to go to all the registrars and update it. To do it offline, go to registrar website and download the relevant form, fill it, provide your folio number, attach a self attested Aadhaar and submit it for linkage. **How can I link it online?** If your mobile is linked to your Aadhaar you link it to your mutual fund online. Visit the registrars website, feed in your PAN and Aadhaar, which will generate a one time password (OTP) on your mobile. Enter that and your Aadhaar will be linked. You will get a message /e-mail from the registrar confirming the same. **What do you do if there are more than one holders in a mutual fund?** It is mandatory for all the holders in a mutual fund to link their Aadhaar. Hence the process has to be done for all holders. **Does a minor child have to link his Aadhaar?** Aadhaar linking is optional for minors, but is mandatory for the guardian. **What happens if Aadhaar is not linked to your mutual fund folio?** The government has directed fund houses to freeze MF folios not linked with Aadhaar post December 31, 2017. **How does an investor holding mutual fund units in demat mode link his Aadhaar?** If you are holding mutual fund units in demat form, you need to approach your depository participant and link your Aadhaar to link your demat account. In this case you do not have to approach the registrars or fund house.

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Meet Tata Power's 'fiercely independent director' who defended Cyrus Mistry

Tata Power BSE 0.60 % unveiled a spectacular performance in its renewable energy portfolio along with the second quarter results recently and one man was thrilled with the results. Nawshir Mirza, the 69-year-old independent director on the Tata Power board, had defended the firm's buyout of Welspun's renewables business against attacks by the group's parent Tata Sons in June this year saying the conglomerate's only intention was to tarnish the name of former chairman Cyrus Mistry, who was ousted in October last year.

Mirza defended the buyout in a chat with ET, pointing to its superior performance. "Welspun is the only business in Tata Power performing as expected," he said. "The deal wasn't sprung upon the board and it wasn't a sleight of hand of the management or Cyrus Mistry. Please understand that we are not a bunch of clowns on the board; we have to be convinced about what and why something is being done," he said. "The Welspun investigation is the property of the audit committee chairman," Mirza said. "The whistleblower policy says it's very important that any investigation has to be done discreetly and if the accused is innocent, their name cannot be tarnished. We have been obedient to the policy."

Tata Sons declined to comment on Mirza's observations. But group sources told ET there was no change in its stance that the buyout of Welspun assets was done at a valuation that cannot be justified even by the recent performance. Mirza was brought on board of Tata Power as an independent director by Ratan Tata in 2007. Before that, he was a nominee of Jardine Matheson in Tata Industries. People who have worked with Mirza say this tall, no-nonsense but humorous independent director is a rare breed in a club that has been vilified amid plummeting standards of corporate governance. He is one of a dying breed of fiercely independent directors that speaks his mind without hesitation, peppered with a sense of humour," said Cyrus Mistry who broke his silence to respond to ET's request to comment on Mirza.

"The Tata Group has never been about one individual," Mistry told ET. "I have always believed that creating an institutional framework that promotes good governance is a key imperative to ensure the long-term success of the Tata Group. Towards this end, one of my early directives to the team had been to create board effectiveness and governance guidelines for all our boards. Nawshir (Mirza) provided a great deal of input into the creation of these guidelines for board effectiveness. As a director he provided me with honest feedback as he did to the management and his colleagues on the board."

"Do not judge a Company by its Governance."

Mirza believes new Tata chairman N Chandrasekaran has a long way to go to solve issues in Tata Power. "It is a complex business and the chairman will have to spend more time in the company to understand the issues. He can't do magic to Tata Power. It's not that simple," he said. "Maybe he is still giving more time to TCSBSE 0.12 % because frankly that is the only engine keeping the group floating," Mirza said." Tata Power will have to encash surplus assets, shares held in Tata Sons or Tata Industries can be disposed of, and the Mundra (ultra mega power project) issue too has to be addressed, he said. Meher Pudumjee, chairperson at Thermax, said Mirza is "very straightforward, doesn't mince his words, and speaks his mind". As for the face-off between Tata Group and Mistry, Mirza said it may have been because of a complete breakdown of communication between Mistry and Tata. "And there was maybe external pressure to throw Mistry out. But I think leaders should be allowed to make mistakes," he said.

NCLAT issues notice to RCom on Manipal Technologies' plea

The National Company Law Appellate Tribunal (NCLAT) on Wednesday issued a notice to Reliance Communications (RCom) in response to a petition filed by Manipal Technologies Ltd that sought dues of about Rs 2.74 crore from the beleaguered telecom company whose shares tanked to a new all-time low. The Karnataka-based company said the dues were for the biometric fingerprint scanners supplied to RCom in 2016. A similar plea was filed with tribunal earlier, which rejected Manipal Technologies' claims. RCom had then said the invoices were raised for HP and not RCom. RCom said in a regulatory filing on Wednesday that a petition under Section 9 of the Insolvency and Bankruptcy Code had earlier been filed by Manipal Technologies Limited (MTL) for dues of Rs 2.74 crore and that it was dismissed on September 14. Now, the appellate tribunal will hear the case on December 4.

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Corporate Development Judicial

CASE LAW	Shailesh Prabhudas Mehta v. Calico Dyeing & Printing Mills Ltd [SC]
DECIDED ON	February 15, 1994
LEGISLATION	Companies Act, 1956- section 111
BRIEF FACTS	refusal to register transmission of shares- action of directors- whether correct- Held, Yes.

Facts: The directors of the respondent company refused to register the transmission of 100 shares to the appellant. The appellant had a long-standing dispute with the company. The appellant alleged malafide intention on the part of the directors. The core issue involved in the appeal was whether the 7 days prescribed in the section is mandatory or directory.

Decision: Appeal dismissed.

CASE LAW	State of Maharashtra v. Reliance Industries Ltd. & ORS [SC]
DECIDED ON	September 15, 2017
LEGISLATION	Land Acquisition Act, 1894
BRIEF FACTS	land belonged to the State government- private building standing thereon- State acquired the building- challenged that without acquiring the land under the building, building per se could not be acquired- whether the challenge tenable- Held, No.

Facts: The State of Maharashtra has come up in appeal against the common judgment dated 10.3.2006 passed by the High Court in two writ petitions being W.P. No.1956/1994 filed by Reliance Industries Ltd. & another and W.P. No.1384/1997 filed by Express Newspapers and another against State of Maharashtra and others. In both the cases, part of the building had been sought to be acquired under the provisions of the Land Acquisition Act, 1894 (hereinafter referred to as “the Act”). In both the cases the owners of building do not own the land. In Express Newspapers the land belongs to the Government and in the case of Reliance Industries, the ownership of the land is with the Port Trust. The question which arises for consideration is whether, under the Act, acquisition of part of the building can be made without acquiring land underneath to such building. The High Court has quashed the acquisition, sans the land, as unsustainable.

Decision: Appeal allowed.

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From the Government

Delegation of powers and functions by Central Government to IBBI

[Issued by the Ministry of Corporate Affairs vide [F. No. 1/27/2013-CL-V(Part-1)] dated 23.10.2017. To be published in the Gazette of India, Extraordinary, Part-II, Section(3) Sub-section(ii)]

- 1) In exercise of the powers conferred by section 458 of the Companies Act, 2013 (18 of 2013), the Central Government hereby delegates the powers and functions vested in it under section 247 of the said Act to the Insolvency and Bankruptcy Board of India, subject to the condition that the Central Government may revoke such delegation of powers or it may exercise the powers under the said section, if in its opinion such a course of action is necessary in the public interest.
- 2) This notification shall come into force with effect from the date of its publication in the Official Gazette.

Relaxation of additional fees and extension of last date of filing of AOC-4 XBRL e-forms using Ind AS under the Companies Act, 2013

[Issued by the Ministry of Corporate Affairs vide [General Circular No.13-2017]

- 1) All companies required to prepare or voluntarily preparing their financial statements in accordance with Companies (Indian Accounting Standards) Rules,2015 for financial year 2016-2017 are required to file their statements only in XBRL format. The draft taxonomy for Ind AS has been uploaded since 30.06.2017 in order to enable the stakeholders to familiarize themselves with the new requirements. The development of tools necessary for deployment of the taxonomy for XBRL filing is expected to be completed by 28.02.2018. It has, therefore, been decided to extend the last date for filing of AOC-4 XBRL for such companies for the financial year 2016-17 without additional fee till 31st March 2018. The filing should be made by these companies accordingly when the Ind AS based XBRL taxonomy is deployed, for which a separate intimation would be given to all the stakeholders.
- 2) This issues with the approval of competent authority.

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SAVE OUR ENVIRONMENT

EDIBLE WATER BOTTLES

An 'edible water bottle' that hopes to replace the millions of plastic bottles thrown away every year has raised over £500,000 in a crowdfunding campaign.

The water ball, named "Ooho!" is a biodegradable and natural membrane which can be fully swallowed and digested, as well as hydrating people in the same way as drinking water.

The product is made from a seaweed extract and is tasteless, although flavours can be added to it.



Skipping Rocks Lab, the company behind it, was founded by three London-based design students, and aims to make a series of sustainable projects of which Ooho! is the first. It plans to trial the use of the balls this year and introduce them at major events such as marathons and music festivals.

Skipping Rocks Lab says the material is cheaper than producing a plastic water bottle. To create the balls, a block of ice is dipped in a solution of calcium chloride and brown algae, and the membrane forms around it. A layer can be peeled off to keep the exterior clean for consumption.

A campaign on crowdfunding site CrowdCube has raised £582,000, with investments spiking since images of the Ooho! balls went viral. More than 500 people have invested in the project.

Source: <http://www.telegraph.co.uk/technology/2017/04/12/edible-water-bottle-could-put-end-plastic-packaging/>

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UPDATES**MCA UPDATES**

- 1) As part of its continuous efforts for simplifying Incorporation related process for providing Ease of Doing Business to stakeholders, MCA will be dispensing with the requirement of separately uploading Forms 49 A& 49B after filing SPICe e-forms. Accordingly, With effect from 6PM of 4thNovember 2017, stakeholders will NOT be required to upload signed 49A/49B using “Submit application for PAN/TAN” service, in respect of any fresh SPICe submission or Resubmission cases. PAN and TAN will continue to be issued as before based on the details submitted in the SPICe form itself.

FEMA UPDATES

- 1) The Legal Entity Identifier (LEI) code is conceived as a key measure to improve the quality and accuracy of financial data systems for better risk management post the Global Financial Crisis. LEI is a 20-digit unique code to identify parties to financial transactions worldwide.
- 2) In exercise of the powers conferred by clause (b) of sub-section (3) of section 6 and section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999) and in supersession of Notification No. FEMA 20/2000-RB and Notification No. FEMA 24/2000-RB both dated May 3, 2000, as amended from time to time, the Reserve Bank makes the various regulations to regulate investment in India by a Person Resident Outside India.

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