

CS NEWS

Connecting Statutes

MAY 2019

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2019 – “Year of Conflicts” - Overtly or Covertly

“Governance is More of Mission; Less of Vision”

MSME Form I - LAST DATE

The eForm MSME FORM-I is required to be filed pursuant to Order dated 22nd January 2019 issued under Section 405 of the Companies Act, 2013 and which are reproduced for your reference:

1. Specified Companies (Furnishing of information about payment to micro and small enterprise suppliers) Order, 2019, all companies, who get supplies of goods or services from micro and small enterprises and whose payments to micro and small enterprise suppliers exceed forty five days from the date of acceptance or the date of deemed acceptance of the goods or services as per the provisions of section 9 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006) (hereafter referred to as “Specified Companies”), shall submit a half yearly return to the Ministry of Corporate Affairs stating the following:

- a. the amount of payment due and
- b. the reasons of the delay;

2. **Every specified company shall file in MSME Form I details of all outstanding dues to Micro or small enterprises suppliers existing on the date of notification of this order on or before 30th May 2019.**

3. Every specified company shall file a return as per MSME Form I by 31st October for the period from April to September and by 30th April for the period from October to March.

Note: There is no fee specified for filing the MSME Form I.

HEADS UP ON EVENTS THAT LED TO HEADS TURN IN APRIL 2019

A chance for promoters to pull out distressed companies:

The Supreme Court order striking down the controversial RBI circular has paved the way for many distressed promoters to pull their companies out of insolvency proceedings. In fact, banks have filed about 150 insolvency cases after the RBI issued the February 12 circular and technically in all these cases promoters can move the NCLT to withdraw the proceedings. Moreover, lawyers feel the grounds on which the Supreme Court has struck down the RBI circular may lead many promoters whose insolvency cases have been resolved with fresh investment by new investors to also seek relief. The contentious RBI circular had instructed banks to resolve debt default cases above ₹2,000 crore as of March 1 within 180 days and if not initiate insolvency proceedings immediately. It had also directed banks to include accounts restructured under different schemes and classified as restructured standard assets besides acting on companies which had delayed interest payment even by a day. The RBI circular was challenged in the Supreme Court by power companies claiming it to be arbitrary and beyond the RBI's legal power (ultra vires) under the Banking Regulation Act. Babu Sivaprakasam, Partner, Economic Law Practice, said it is not easy for banks to show that the insolvency cases filed after February 12 are independent of the RBI circular and hence need to be continued. "Some of the debtors from other sectors whose insolvency cases were accepted after February 12 can also seek relief under the Supreme Court order," he said. If the Supreme Court had questioned the RBI's power to issue such harsh direction, lawyers said promoters of the initial 42 cases can also object to the basis on which their companies were selected for insolvency proceedings. Power sector to benefit: Vishrov Mukerjee, Partner, of J Sagar Associates, said the ruling will benefit about four cases in the power sector and many companies will get more time to resolve the issue. It will also help banks as in most insolvency cases banks have taken a huge haircut, he added. For instance, the entire debt resolution was almost done in the IL&FS power project in Tamil Nadu but it has to be called off since it was executed after the February 12 circular of the RBI.

Source:<https://www.thehindubusinessline.com/companies/a-chance-for-promoters-to-pull-out-distressed-companies/article26714182.ece>

CEOs, independent directors hold key to good corporate governance: Narayana Murthy:

Infosys co-founder NR Narayana Murthy on Saturday stressed the role of independent directors and CEOs in ensuring "good corporate governance". According to Murthy, good governance is about representing shareholders faithfully and increasing shareholder value legally and ethically.

"Governance is More of Mission; Less of Vision"

“Good governance is about enhancing the reputation of the corporation. It involves understanding the risks involved in every function and mitigating them through debates and discussions,” Murthy said, delivering his convocation address at the Indian Institute of Management, Calcutta (IIM-C), here on Saturday. It also entails holding the management responsible to be fair, honest, transparent and accountable to every stakeholder of the company. The CEO of the organisation should understand the nuances of industry and intricacies of the business model. ‘Avoid cronyism’: “The CEO should not put pressure on Board to obtain disproportionate direct or indirect advantage for himself or herself or his or her family, friends and cronies to the exclusion of fair compensation for other employees,” he said. He emphasised that a CEO should be ever ready to question deeply and seek the truth. “It is about disagreeing without being disagreeable on the boardroom,” he said. Talking about the role of an independent director, he said, the accountability of an independent director is only to his shareholders and the regulators. “Shareholders have every right to ask questions and you have to be transparent. But you cannot be party to selective disclosure to just any group of shareholders, including the founders,” he said. Govt’s role: Emphasising the role the government should play in enhancing business environment thereby creating jobs, he said, that the government should be an “impartial regulator.” The government should resist the temptation to get into or stay in a business, he said. “Jish desh mein sarkar byapari hota hai us desh mein log bhikari ho jate hain (In a country where the government gets into business, there the citizens turn into beggars).”

Source:<https://www.thehindubusinessline.com/companies/ceos-independent-directors-hold-key-to-good-corporate-governance-murthy/article26763016.ece>

SEBI’s newly introduced insider-trading norms raise the bar on unpublished price-sensitive information:

Companies and promoters will have to be more cautious in dealing with unpublished price-sensitive information (UPSI) from this month, as SEBI’s new insider-trading norms will hold them responsible if they hold on to UPSI without any ‘legitimate purpose’. SEBI’s recent amendment has widened the applicability of its insider-trading norms. The regulator has now extended the requirement for reporting trades, and seeking clearance before trading in the company’s shares, even to senior employees of material subsidiaries and promoters of listed companies. Flow of UPSI: It has also clarified that if the person who has traded is in possession of an UPSI, his trades will be presumed to be motivated by the UPSI. Companies will have to formulate policies to determine what constitutes ‘legitimate purpose’, whistle-blower norms for reporting leaks of UPSI and inquiry norms for determining the source of leaks. These policies are aimed at monitoring the flow of UPSI and encouraging employees to inform the company about any suspected leaks.

“Governance is More of Mission; Less of Vision”

SEBI has specified that the term 'legitimate purpose' will include the sharing of UPSI in the ordinary course of business by an insider with partners, collaborators, lenders, customers, suppliers, merchant bankers, legal advisors, auditors, insolvency professionals or other advisers or consultants, provided that such sharing has not been carried out to evade or circumvent the prohibitions of these regulations. The norms, which came into force from April, also stress upon listed companies to maintain a record of personal information such as PAN, mobile number of their directors, employees and immediate relatives, and persons with whom such employees share material financial relationships. The records like mobile number are likely to make it easier for SEBI to establish a connection between the company and the person who trades, and provide valuable inputs during investigations about UPSI leakages, experts say. WhatsApp circulation: In some recent cases, SEBI had found that key financial details of a company were circulated on WhatsApp, but it could not pin down the source of information as the UPSI was available with many senior employees and board members. The markets regulator decided to amend insider trading rules after it passed several directions against various companies, including Axis Bank, Tata Motors and HDFC Bank, to ascertain leakage of confidential financial results in private WhatsApp groups ahead of their official announcement. Companies are now required to have internal controls for identifying inside information and maintain lists of employees and other persons with whom such information is shared. They are also required to periodically review their internal processes to evaluate the effectiveness of internal controls and intimate the persons receiving UPSI of their obligations towards preventing misuse of such information for insider-trading by advance notice. SEBI's defence available for off-market inter se transfers between promoters, who were in possession of UPSI, has been extended to all insiders. A similar defence will be available for block deals, the regulator has said.

Source:<https://www.thehindubusinessline.com/markets/sebis-newly-introduced-insider-trading-norms-raise-the-bar-on-unpublished-price-sensitive-information/article26905053.ece>

IRCTC scandal: CBI probes its own for 'leak'

The Central Bureau of Investigation is probing the involvement of its officers in leaking an "unsigned" soft copy of the charge-sheet filed in the IRCTC hotel lease-for-land scandal to the "whistle-blower" in the case. Rashtriya Janata Dal leader and former railway minister Lalu Prasad, his wife Rabri Devi and son Tejashwi have been charged in the case, which Venkatesh Kumar Sharma, a Bihar resident, claims to have first flagged. The agency is investigating the role of unknown officers of the Economic Offence- II branch on charges of "misconduct" for providing an "unsigned soft copy" of the charge-sheet to Sharma. The agency summoned Sharma for questioning last month but he did not appear.

The CBI wants to know how Sharma managed to annex a true copy of the unsigned charge-sheet in his petition to the Supreme Court last September, seeking action against then CBI Director Alok Verma for allegedly interfering in the investigation of the IRCTC scam. Sharma accused Verma of “stopping” CBI sleuths from carrying out a targeted raid “for more than an hour,” which resulted in the loss of crucial evidence.

Source:http://economictimes.indiatimes.com/articleshow/69051591.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

Tata Consultancy Services faces new law suit over ‘trade secret theft’:

Computer Sciences Corp (CSC) has filed a lawsuit against Tata Consultancy Services NSE 1.98 %, alleging that the Indian IT bellwether is stealing its trade secrets to build an insurance platform, following a \$2-billion deal that TCS won from US insurer TransAmerica last year. This is the second such suit against TCS, after the Indian IT major lost a similar case to Epic Systems, setting it back by \$420 million in penalties. TCS is currently appealing that in a higher court. TCS is “improperly accessing” its codes, the US-based CSC said in its lawsuit filed last week in Texas, seeking punitive damages. ET has seen a copy of the lawsuit. “Our legal team is reviewing the allegations and will respond appropriately. TCS will strongly defend its position before the court. As this is a pending legal matter, TCS would not like to comment further at this time,” a TCS spokesperson said in response to a detailed questionnaire sent by ET. CSC, whose parent is the NYSE-listed DXC Technology, had licensed its insurance products Vantage and CyberLife to Money Services Inc (MSI), which is owned by Trans-America. MSI was using the CSC software to administer and process TransAmerica’s insurance and annuity policies, the suit said. TCS, which took on board 2,200 TransAmerica employees as part of the deal, planned to use its BaNCS platform to administer the policies.

Source:http://economictimes.indiatimes.com/articleshow/69106238.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

CORPORATE DEVELOPMENT JUDICIAL

Case law	<i>The Associated Journals Ltd & ANR v. Land & Development Office [Del]</i>
Decided on	<i>February 28, 2019</i>
Legislation	<i>National Herald case- Companies Act</i>
Brief facts	<i>Acquisition of shares principle of piercing corporate veil- Delhi High Court reiterates the principle.</i>

Facts: Though this case covered law on various aspects of the issue such as cancellation of lease, right to re-entry, transfer of property by transfer of shareholdings, we are concerned with the issue of ‘piercing the corporate veil’ and how and when the smoke screen of corporate identity could be pierced to identify the real beneficiaries in the camouflaged transaction. The following are relevant facts for the above issue. Indian National Congress sometimes referred to as AICC had advanced a loan of Rs.90 crores to AJL. On 13th August 2010, an application was made for incorporation of a charitable non-profit company (a company under Section 25 of the Companies Act) named Young India and ultimately on 23rd November 2010 Young India was incorporated with Sh. Suman Dubey and Sh. Sam Pitroda as its founder Directors. This company had an authorized share capital of 5,000 shares of Rs.100/- each valued at Rs.5,00,000/- and the paid up share capital was 1100 shares of Rs.100/- each valued at Rs.1,10,000/- and the company at that point of time had two shareholders, (a) Shri Sam Pitroda - 550 shares valued at Rs.100/- each and (b) Shri Suman Dubey - 5,000 shares valued at Rs.100/- each. On 13th December 2010, the first Managing Committee Meeting of Young India took place and Shri Rahul Gandhi was appointed as its Director, namely, a non-shareholder and Shri Motilal Vora and Shri Oscar Fernandes as ordinary members. Within five days thereafter, that is, on 18th December 2010, by a deed of assignment the loan of Rs.90 crores and odd outstanding in the books of Indian National Congress as recoverable from Associated Law Journals for the period 2002 to 2011 was transferred to Young India. Three days thereafter, on 21st December, 2010, a Board Meeting of AJL called for an EGM which was subsequently held on 24th December, 2010 and on the said date a loan of Rs.1 crore was received by Young India from another company M/s Dotex and thereafter on 28th December, 2010 i.e. within a week a formal deed of assignment was executed by AICC assigning the loan of Rs.90 crores in favour of Young India.

Immediately thereafter on 21st January 2011, an EGM of Associated Law Journal was held approving fresh issue of 9.021 crores shares to Young India and on 22nd January 2011 i.e. on the next day the second Managing Committee of Young India was held in which Smt. Sonia Gandhi, Mr. Motilal Vohra and Mr. Oscar Fernandes were appointed as Directors and the 550 shares of the existing shareholders of Young India - Suman Dubey and Sam Pitroda were transferred to Smt. Sonia Gandhi and Mr. Oscar Fernandes and on the same day fresh allotment of Young India shares were made in the following manner: (a) 1,900 shares having paid up value of Rs.1,90,000/- to Shri Rahul Gandhi, (b) 1,350 shares with a paid up amount of Rs.1,35,000/- in the name of Smt. Sonia Gandhi, (c) 600 shares with a paid up value of Rs.60,000 in the name of Sh. Motilal Vohra and (d) 50 shares with a paid up value of Rs.5,000 in the name of Sh. Oscar Fernandes and after issuance of PAN by the Income Tax Department a bank account was opened by Young India with Citibank on 14th February, 2011 and the cheque issued by M/s Dotex for Rs.1 crore was deposited in the Young India Bank account on the said day and on 26th February, 2011 Young India issued a cheque of Rs.50 lakhs to AICC as consideration for assignment of Rs.90 crore debt payable by ALJ to AICC. On the same day, i.e., 26th February, 2011, ALJ allotted 9,02,16,899 equity shares to Young India in pursuance to the AGM Meeting decision held on 21st January, 2011 and the ALJ Board Meeting on 26th February, 2011 and thereafter Young India applied for exemption under Section 12-A on 29th March, 2011 and on 9th May, 2011 the Income Tax Authorities granted the exemption with effect from the F.Y. 2010-11.

Decision: Appeal dismissed.

Source: <https://indiankanoon.org/doc/74259456/>

Case law	<i>Adjudicating Officer, SEBI v. Bhavesh Pabari [SC]</i>
Decided on	<i>February 28, 2019</i>
Legislation	<i>SEBI Act- section 15J read with sections 15A to H</i>
Brief facts	<i>Powers of adjudicating officer in levying penalty- Supreme Court clarifies law.</i>

Facts: Two primary questions, in a way interconnected, have been referred by the Referral judgment and order dated 14th March 2016 passed in Siddharth Chaturvedi Vs. Securities and Exchange Board of India (2016) 12 SCC 119. The questions referred can be enumerated and summarized as follows:

(i) Whether the conditions stipulated in clauses (a), (b) and (c) of Section 15J of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “SEBI Act”) are exhaustive to govern the discretion in the Adjudicating Officer to decide on the quantum of penalty or the said conditions are merely illustrative?

(ii) Whether the power and discretion vested by Section 15J of the SEBI Act to decide on the quantum of penalty, regardless of the manner in which the first question is answered, stands eclipsed by the penalty provisions contained in Section 15A to Section 15HA of the SEBI Act?

Source:https://www.sci.gov.in/supremecourt/2013/36291/36291_2013_Judgement_28-Feb-2019.pdf

FROM THE GOVERNMENT

Companies (Incorporation) 2nd Amendment Rule 2019

In exercise of the powers conferred by sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Incorporation) Rules, 2014, namely: -

1. (1) These rules may be called the Companies (Incorporation) Second Amendment Rules, 2019.
(2) Save as otherwise provided in the notification, this notification shall come into force from the date of publication. 2. In the Companies (Incorporation) Rules, 2014 (hereinafter referred to as the said rules),
2. In the Companies (Incorporation) Rules, 2014 (hereinafter referred to as the said rules),
 - I) in clause (a), sub-rule (5) of rule 30, for the words “with the widest circulation”, the words “with wide circulation” shall be substituted.
 - II) in the second proviso to sub-rule (2) of rule (38), for the words “equal to rupees ten lakhs” the words “equal to rupees fifteen lakhs” shall be substituted, with effect from 18.03.2019.

Source:http://www.mca.gov.in/Ministry/pdf/CompaniesIncorporationIIAmendmentRules_07032019.pdf

Companies (Incorporation) Third Amendment Rule, 2019

In exercise of the powers conferred by sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Incorporation) Rules, 2014, namely: -

1. (1) These rules may be called the Companies (Incorporation) Third Amendment Rules, 2019.
(2) They shall come into force on the date of publication in the official gazette.
2. In the Companies (Incorporation) Rules, 2014 (hereinafter referred to as the said rules),
 - i) after rule 38, the following rule shall be inserted, namely. -
“38A. Application for registration of the Goods and Service Tax Identification Number (GSTIN), Employees’ State Insurance Corporation (ESIC) registration and Employees’ Provident Fund Organisation (EPFQ) registration

The application for incorporation of a company under rule 38 shall be accompanied by e-form AGILE (INC-35) containing an application for registration of the following numbers, namely:

- (a) GSTIN with effect from 31st March 2019
- (b) EPFO with effect from 8th April 2019
- (c) ESIC with effect from 15th April 2019

Source: http://www.mca.gov.in/Ministry/pdf/companiesINC3rdAmendmentRules_30032019.pdf

SAVE OUR ENVIRONMENT

“Eco ATM”

If you’re thinking about recycling your phone/device, you’re not alone. In just three years from now, Americans will be recycling nearly 200 million tablets, phones, and other devices on an annual basis (Compass Intelligence). And anecdotally, we hear from customers all the time, who ask, “Where can I sell my phone?”

To better meet this growing demand, provides a simple way to sell your phone. And safe, too! Our network of 2,000-plus kiosks is safe, conveniently located, and super-easy to use. When you recycle through, you get fast cash for your phones, and the earth gets much needed TLC. Talk about a win-win.



Maybe it’s not your phone – maybe you want to sell your tablet. The good news is that the self-service sales kiosks accept all kinds of personal electronics, including:

- iPhones
- Broken iPhones
- Other Apple products
- Android tablet devices
- Amazon readers like Kindle Fire
- Motorola cell phones and smartphones
- HTC cell phones and smartphones
- Blackberry personal data devices
- Samsung Devices including the Galaxy S series, Note and more

“Governance is More of Mission; Less of Vision”

Trade in Your Phone Today

The reason to get into this business to begin with was to encourage consumers to care for the environment. The strategy was simple: make it safe, convenient, and easy for people to trade in their used devices and provide a financial reward for each device they recycle. Since then, it had bought over 9 million devices from people just like you, so it had got this thing down to a science. It is delighted, but not surprised, to be regarded as one of the most trusted brands in the personal electronics industry.

So don't delay -- sell your phone (or other device) for cash at one of the kiosks.

Source: <https://locations.ecoatm.com/>

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