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Article

Liquidation preference - Relevance in private companies

By **Priyanshi Singhal**

In Indian law, manner of distribution of funds in case of liquidation or winding up is prescribed under the Companies Act, 2013 (Act)[1] and the Insolvency and Bankruptcy Code, 2016 (Code),[2] application of which is subject to the nature of the event. The waterfall, as recognized at Indian law, puts shareholders right at the end, with preference shareholders above equity shareholders at all times. The Code specifically prohibits any contractual agreements that might disrupt the order of priority of payment upon liquidation of assets.

Liquidation preference (LP) is essentially a tool for downside protection of an investor. It protects the investor, at the time of a 'liquidity event', from exiting the company at a price lower than what was initially expected out of its investment. Thus, LP can be understood as the preferential right of the investor to get paid in case of a 'liquidity event'. A 'liquidity event' includes any recapitalization, reorganization, liquidation, winding up, dissolution or any other similar transaction which might modify or reclassify the rights of the investor.

LP can be built into an investment either though a non-participating LP agreement or through a participating LP agreement. Under a non-participating LP agreement, the investor is entitled to receive either the amount equal to its investment, or in certain cases a multiple of the amount of the investment made by it, depending upon the commercial arrangement between the parties. Under a participating LP agreement, the investor after receiving the pre-determined returns in accordance with the agreement, is further entitled to participate along with the other shareholders in distribution of the surplus proceeds.

LP can be given by creating a special class of shareholders of the company and providing them special rights with respect to preference in liquidation.[3] Any such variation of rights must be authorized by the charter documents of the company as well.

Section 43 of the Act characterizes the share capital of a company limited by shares into – (i) equity share capital (either with voting rights or with differential rights to dividend, voting or otherwise) and (ii) preference share capital. Preference shareholders enjoy preferential treatment in payment of dividend as well as repayment in the event of liquidation, winding up or repayment of capital of the company. Companies can issue equity shares with differential rights only in compliance of conditions related thereto specified under the Companies (Share Capital and Debentures) Rules, 2014.

Section 47 of the Act distinguishes between equity shareholders and preference shareholders with respect to voting rights. Equity shareholders are entitled to vote on all resolutions, whereas preference shareholders have a right to vote on limited matters which

[1] Overriding preferential payments - Section 326 and preferential payments – Section 327 of the Companies Act, 2013.
[2] Distribution of Assets - Section 53 of the Insolvency and Bankruptcy Code, 2016.

[3] Variation of shareholders' rights - Section 48 of the Companies Act, 2013.

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include *inter alia* such resolutions which affect the rights attached to those preference shares; or are in relation to winding up or repayment or reduction of capital of the company as prescribed under the Act.

Thus, the limitation on voting matters may appear to make investment in preference shares unappealing for investors despite the right of preferential payment in case of a 'liquidity event'. However, the Ministry of Corporate Affairs has provided certain exemptions to private companies[4] under Sections 43 and 47 of the Act, where the memorandum or articles of association of the company so provide. Illustratively, ensuing exemption, a private company may provide for priority capital and voting rights for equity and preference shares, as long as these rights have been built into the charter documents of the company. Therefore, in case of private companies, the purpose of LP for investors, not looking to forgo their voting rights, can be achieved by issuing preference shares with voting rights rather than by way of equity shares with differential rights.

Subject to the company's charter documents, preference shareholders may also be permitted to receive, upon winding up or repayment of capital, a preferential right to payment of either a fixed premium or premium on any fixed scale.[5] In addition to the preferential right to repayment, on occurrence of a 'liquidity event', preference shareholders <u>may</u> be accorded the right to participate, whether fully or to a limited extent, in any surplus proceeds that remain after repayment of the entire capital (equity and preference), along with the other shareholders of the company.[6] This feature of preference shares, essentially fulfils the purpose of a participating LP agreement.

Nevertheless, while the issuance of preference shares with rights as discussed above may appear to give full benefits of an LP clause to investors, there are certain features of an LP clause that make it more attractive than preference shares. One such downside to the abovementioned arrangement is the concept of distributable compensation to preference shareholders in case of a 'liquidity event' being net of repayment of capital, on a *pro rata* basis. Further, the uncertainty of adequate funds distributable as premium to the preference shareholders upon repayment of capital, makes the existence of an LP clause, subject to the provisions of the company's charter documents, prudent in a shareholders' agreement.

The enforceability of an LP clause, however, is a looming question. While the Act does not restrict contractual agreements that call for assured returns, as is the case with an LP clause in case of 'liquidity events', the enforcement has not yet been tested in Indian courts. It is important to understand that effective enforcement of an LP clause would be strictly dependent on the nature of the 'liquidity event' itself. Application of laws in case of sale or transfer of securities is different from that of liquidation ordered by courts.

The effects of an LP clause must also be reviewed from a taxation perspective. Further, in light of the pricing guidelines issued by the Reserve Bank of India, accommodating LP clauses in case of foreign investors is a tricky proposition. With such uncertainties in the Indian context, it would be interesting to watch out for the rise or fall of LP clauses going forward.

[The author is an Associate in Corporate practice, Lakshmikumaran & Sridharan, New Delhi]

[4] Notification No. G.S.R 464 (E) dated June 5, 2015.
[5] Kinds of share capital – Section 43 of the Companies Act, 2013.
[6] Ibid.

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Budget 2019 - Key changes for corporate sector in India

The Hon'ble Finance Minister of India, made the budget speech for the year 2019-2020 and presented the Finance (No. 2) Bill, 2019 on July 05, 2019.

Amongst several measures that were announced as part of the Budget Speech and Finance Bill, from a policy and developmental perspective, there were certain announcements made which may have an impact in the corporate sector in general. The proposed amendments have been provided in the Finance Bill.

Minimum public shareholding in the listed companies increased from the existing threshold of 25% to 35%

The Securities and Exchange Board of India ("SEBI") is to consider increasing the minimum public shareholding in the listed companies from the existing threshold of 25% (twenty five percent) to 35% (thirty five percent).

The amendment has been proposed to increase public shareholding in listed companies and to further protect the interest of the public investors in listed companies.

Pursuant to the amendment, closely held public listed companies (i.e. listed companies having 75% of shareholding held by promoters) need to evaluate option of (i) delisting the securities of such listed companies or (ii) to increase the minimum public shareholding to 35%.

Additionally, this will also have impact on (i) related party transactions of such listed companies considering that approval of majority of minority shareholders will be required for such transactions and (ii) passing of special resolution matters of such listed companies.

Local sourcing norms will be eased for FDI in Single Brand Retail Trading ("SBRT") sector

The relaxation in local sourcing norms requirement for SBRT is a move to benefit foreign investors (especially, those dealing in technology advanced products) to invest in India.

Earlier, under the FDI Policy, 2017, a 3-year exemption period was given from the requirement of 30% sourcing norms for entities undertaking SBRT of products having 'state-of-art' and 'cutting-edge' technology and where local sourcing was not possible.

The norms were further liberalized with the amendments made pursuant to Press Note No. 1 (2018 series) dated January 23, 2018 whereby an exemption of 5 (five) years was provided to avoid duplication of compliance requirements for SBRT entities which were already sourcing 30% locally for their global operations.

This proposed amendment encourages more FDI in SBRT sector or business activity by allowing new entrants in to this sector.

100% Foreign Direct Investment will be permitted for insurance intermediaries

This amendment has been introduced to further liberalize FDI for insurance intermediaries.

With the proposed amendment coming into force, the foreign investors will be able explore insurance intermediary sector as well in addition to other financial services sector and this will potentially increase the FDI inflow for insurance intermediaries.

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FDI in aviation, media (animation, AVGC) and insurance sectors to be further liberalized

Currently, under the FDI Policy, 2017, FDI up to 26% is permitted in print media sector through the approval route whereas in aviation sector, FDI up to 49% is permitted for air transport services through automatic route.

The proposed liberalization (i) will provide a much needed boost to the aviation sector and (ii) seeks to further liberalize the aviation sector including with respect to financing and leasing activities made from the Indian shores.

Existing Know Your Customer (KYC) norms for Foreign Portfolio Investors ("FPIs") to be rationalized and streamlined

It is proposed to rationalize and streamline the existing Know Your Customer (KYC) norms for FPIs to make it more investor friendly without compromising the integrity of cross-border capital flows.

Under the existing regime, the FPIs were reluctant in sharing the complete KYC details especially, in relation to identification of beneficial owners of FPIs and other disclosures required to be made by FPIs with respect to such beneficial owners.

The proposed amendment will provide relief to the existing FPIs and also seeks to encourage new FPI into the Indian securities market.

Listing norms for social enterprises and voluntary organizations to be introduced

Under the Budget Speech a new provision is proposed to be made for creating an electronic fund raising platform similar to a social stock exchange under the regulatory ambit of SEBI for listing social enterprises and voluntary organizations working for the realization of a social welfare objective so that such enterprises and organizations can raise capital as equity, debt or as units like a mutual fund.

It will be interesting to see how the term 'social enterprises' and 'voluntary organizations' will be defined under the proposed listing norms of SEBI.

The proposed amendment will help Section 8 companies, charitable trusts and societies in mobilizing funds for public welfare.

Statutory limit for investment by FPIs to be increased

The statutory limit for FPIs to make investment in a company has been increased from 24% to sectoral foreign investment limit. The proposed amendment also provides an option to concerned corporates to limit the investment to a lower threshold. Post this amendment, FPIs will be permitted to subscribe to listed debt securities issued by Real estate investment funds (ReITs) and Infrastructure Investment Trusts (InvITs).

With the notification of the proposed amendment, FPIs will be able to invest in both stock targeted investment and also in passive investments wherein funds are dependent upon available floating stock which are on the global indices.

Non-Resident Indian ("NRI") and portfolio investment scheme route to be merged with the FPI route

The Budget speech also proposed merger of NRI and portfolio investment scheme route with the FPI route. Such merger of investments will provide for a single law governing foreign investors and regulate investments and ensure proper regulations regulating funds brought in by the non-resident Indians and person of Indian origin. However, the merger of the investments will require a legal framework to enable smooth transition from present law to the proposed law.

Proposed amendments to Payments and Settlement Systems Act, 2007

With the increase in usage of low-cost digital modes of payment such as BHIM UPI, UPI-QR

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Code, RTGS and other such digital modes, it is proposed that business establishments with annual turnover of more than Rs. 50,00,00,000 shall mandatorily offer such low cost digital modes of payment to their customers and no charges or merchant discount rate shall be imposed on customers as well as merchants for opting for such payment mechanism.

Under the Finance Bill, it has been stated and proposed as an amendment in Payments and Settlement Systems Act, 2007 that no bank or system provider shall impose any charge upon anyone, either directly or indirectly, for using the electronic modes of payment prescribed under Section 269SU of the Income-tax Act, 1961.

Consolidation of labour law

In order to reduce the labour law related disputes, it has been proposed to streamline multiple labour laws into a set of four labour codes. The proposed amendment will ensure that registration process and process for filing of returns will get standardized and streamlined.

Eligibility criteria for NBFC tightened

Section 45-IA of the RBI Act, 1934 has been proposed to be modified to increase the requirements related to registration and net owned funds in relation to non-banking financial companies (NBFCs) which intends to carry on the business of non-banking financial institution. The minimum threshold for the NBFC's has been proposed to be raised from 'twenty-five lakh rupees or such other amount, not exceeding two hundred lakh rupees' to 'twenty-five lakh rupees or such other amount, not exceeding hundred crore rupees'.

The above increase proposed to be made in the threshold is subject to condition that banks may notify different amounts of net owned fund for different categories of NBFC's. This will create a restriction on all the deposit taking as well as systemically important non-deposit taking NBFCs. Further, now stringent compliances will have to be followed in order to fall under the ambit of NBFCs.

Additional relaxations for start-ups

Under the extant regulations for start-ups, the start-ups are relaxed to justify their fair market value of shares to the Category I Alternate Investment Fund ("AIF"). This relaxation is proposed to be extended to the investors falling in the Category II AIF. Accordingly, the valuation of shares issued to these funds by start-ups shall be beyond the scope of income tax scrutiny. Further, the proposed amendment is in line with 'Startup India' initiative with an aspiration to impart more funding support.

Notifications and Circulars

SEBI signs memorandum of understanding with Ministry of Corporate Affairs: Securities and Exchange Board of India ("SEBI") issued a Press Release No.15./2019 dated June 7, 2019 announcing the signing of a formal Memorandum of Understanding ("MOU") between the Ministry of Corporate Affairs ("MCA") and SEBI for data exchange between the 2 (two) regulatory organisations, on an automatic and regular basis. Since SEBI has the entire database of listed entities and the MCA has the database of all the registered firms, including unlisted subsidiaries of

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listed entities, the MoU assumes importance for a wholistic approach to solve fraudulent cases. In addition to regular exchange of data, SEBI and MCA will also exchange any information available in their respective databases, for carrying out scrutiny, inspection, investigation and prosecution on case to case basis. The MoU also refers to the constitution of a Data Exchange Steering Group, a formal body formed to give effect to this initiative, which will meet periodically to review the data exchange status and take steps to further improve the effectiveness of the data sharing mechanism.

Annual Return on Foreign Liabilities and Assets Reporting by Indian companies – RBI notifies web-portal interface: RBI has notified the new online portal for annual returns on Foreign Liabilities & Assets ("FLA") with the objective to enhance the security-level in data submission and to improve the data quality, *vide* Notification dated June 28, 2019. This will replace the present email-based reporting system for submission of the FLA return with a web-based system online reporting portal. FLA Returns have been notified under FEMA 1999 and are required to be submitted by all the India-resident companies which have received foreign direct investment and/or made overseas investment in any of the previous year(s), including current year by July 15 every year. Non-filing of the return before due date will be treated as a violation of FEMA 1999 with imposition of prescribed penalties.

The new online portal would facilitate data submission by eligible entities including the alternative investment funds (AIF) registered with SEBI as also the reporting of foreign investment in the form of capital/profit share contribution received/transferred in case of LLPs and investment by person resident outside India in an investment vehicle. These directions have come into force with immediate effect and are applicable for reporting of information for the year 2018-19.

Filing of Form BEN-2 under the Companies Act, 2013: The MCA has notified the Companies (Significant Beneficial Owners) (Second Amendment) Rules, 2019 ("SBO Rules") & has revised Form BEN 2 (Return u/s 89 in respect of declaration of significant beneficial ownership) in shares of a company. This form was made available for filing on July 02, 2019 in the MCA portal. The stakeholders have been asked to plan accordingly in terms of General Circular No. 07/2018 dated September 6, 2018 which deals with extension of last date of filing of form BEN-2 and states that the *time limit for filing BEN-2 will be 30 days from deployment of the e-form on the portal.*

As a background, the SBO Rules were notified by MCA *vide* Notification dated February 8, 2019 which are subject to the provisions of Section 90 & Section 469(1) (2) of Companies Act, 2013 ("Act"). As per Section 90 of the Act read with SBO Rules, every individual who is considered to be a 'significant beneficial owner' ("SBO") in a reporting company, is required to file a declaration with the reporting company in Form BEN-1. The next step was then for the reporting to file this declaration(s) with the MCA. *Through this compliance, MCA intends to identify who is in actual control of the reporting company, though the shareholding of the reporting company may not, at the outset, depict the same. This may be considered as an anti-money laundering initiative of the MCA.*

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Ratio Decidendi

Compliance of Section 62(1)(c) of Companies Act, 2013 ensures that allotment done is not prejudicial to interest of other shareholder or to the interest of Company

Key Points

While ascertaining whether shares allotted to Respondent 2 would amount to oppression and mismanagement, the NCLT elucidated that compliance of Section 62(1)(c) is looked into as it ensures that the allotment is done to any person at a price which is not prejudicial to the interest of other shareholder or to the interest of the Company.

Brief Facts

1st respondent, is a private limited company incorporated under the provisions of the Companies Act, 1956 on 18th January, 2008. The paid-up equity share capital of the company is INR 10,00,000/- consisting of 1,00,000 equity shares of INR 10/- each, equally subscribed to by both the subscribers to the Memorandum of Association i.e. the Appellant and the 2nd Respondent. Thus, the Appellant and 2nd Respondent are its co-promoter with 50:50 equity shareholding pattern.

The Appellant accused the 2nd Respondent of indulging in anti-company activities and resorting to acts of mismanagement and creation of fake documents, tampering the public records of ROC/MCA web portal by uploading fake documents and resolutions. The Appellant also claimed that the 2nd Respondent had failed to comply with the mandatory statutory compliances of the Companies Act, 1956/2013.

The Appellant further argued that the 2nd Respondent had illegally allotted 90,000 shares to himself on 3.9.2014 when there was no agenda item for allotment of such equity shares. The Appellant argued that the 2nd Respondent fraudulently uploaded fake return of allotment in Form PAS-3 showing an allotment of 90,000 shares to himself. The Appellant further argued that due to this illegal allotment the Appellant had been reduced to minority shareholding from 50% to 5% in 1st Respondent, the company.

Issue for consideration:

Whether the allotment of 90,000 shares of the 1st Respondent to the 2nd Respondent is oppressive vis-à-vis the Appellant and void / illegal?

Held:

The NCLAT opined that compliance of Section 62(1)(c) ensures that the allotment is done to any person at a price which is not prejudicial to the interest of other shareholder or to the interest of the company. Though enough was pleaded to justify allotment of the said 90,000 shares to the 2nd Respondent, not a single evidence was pleaded or produced to show that for such allotment compliance of Section 62(1) (c) has been done. In view of the position, allotment of 90,000 shares to the 2nd Respondent could not be held to be validly done. Thus, the exercise carried out was not only illegal but was also oppressive to the Appellant. As the company was ongoing it would not have been in the interest of the company or in the interest of shareholder to be wound up. The allotment of 90,000 equity shares to 2nd respondent was set aside. Other reliefs sought for were rejected.

[*Rachakonda Siva Kumar* v. *Zetatek Engineering Systems Pvt. Ltd. and Ors.* [2019] 213 CompCase 337]

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Company cannot be struck off from ROC u/s. 248 of Companies Act, 2013 merely on grounds of statutory non-compliances

Key Points

A Company cannot be struck off from the Register of Companies under Section 248 of the Companies Act, 2013 merely on the ground of statutory non-compliances when there were cogent reasons justifying its restoration.

Brief Facts

Appellant came to be struck off from the Register of Companies under Section 248 of the Companies Act, 2013 by the Respondent - 'Registrar of Companies' for failure on the part of the Appellant to file its annual returns and balance sheets since incorporation. After rejection of the application of the Appellant company for restoration of the company's name, the company filed an appeal before NCLAT.

Issue:

Whether the Appellant Company was rightly struck off by the Registrar of Companies under Section 248 of the Companies Act, 2013 for non-compliance to make statutory filings even though there was business being carried on by the Appellant?

Held:

The Appellate Tribunal held that the Appellant was able to demonstrate that it was carrying on business of sale and purchase of property though the instances given are few and far between and such transactions cannot be said to be substantial and of respectable magnitude. However, that does not detract from the fact that the Appellant was carrying on business which was seriously affected because of pending legal process. The Appellate Tribunal was of the view that in the given circumstances, it would be just to restore the struck off Appellant at the instance of Appellant, Company itself or its Shareholder or Director.

Further, the Appellant Tribunal held that the Tribunal erred in declining to restore the Appellant Company merely on the ground of statutory non-compliances when there were cogent reasons justifying its restoration. The Tribunal had also failed to notice the effect of its refusal to restore the Appellant Company which undoubtedly would have a deleterious effect on the very existence of the Company in as much as the Appellant would no more be able to defend the litigation slapped on it and would get dismissed into oblivion thereby sounding a death-knell to the very existence of the Company. It held that the Tribunal appeared to have been oblivious of the proposition that it had power to order restoration of the Appellant Company in the Register of Companies on a just ground notwithstanding the fact that it failed to transact business for the assigned reasons. According to NCLAT, the matter was to be approached from a broader perspective keeping in view the interests of various stakeholders and larger social interest which can be better sub-served by restoring a Company struck off for mere statutory non-compliances, when such company is not a Shell Company as was the admitted position in the instant case.

The Appellant was restored to its original status. The Appellant was further directed to file all statutory compliances/returns together with the prescribed fees and penalties leviable thereon as mandated by law.

[*Adroit Trade (P) Ltd.* v. *Registrar of Companies, Chennai* - [2019] 214 CompCas 360]

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News Nuggets

Customs cannot sale goods in possession after moratorium under IBC

NCLAT has held that on passing of Order of Moratorium by the NCLT, it is not open to the Customs authorities to issue an e-auction notice of assets belonging to the corporate debtor since same cannot be sold during period of the moratorium. The Appellate Tribunal in the case of *Commissioner v. Ram Swarup Industries* upheld the NCLT Order restricting Customs from selling assets of the corporate debtor. It observed that no step was taken by the Customs for sale of goods in terms of Section 48 of the Customs Act on non-clearance of goods within 30 days and ownership of goods in custody was still with the Corporate Debtor. Customs department's plea that that the imported goods were not 'assets' of the 'Corporate Debtor', when customs duty leviable is yet to be discharged and the said goods are yet to be cleared for home consumption, was hence rejected by the NCLAT. It was also held that the Explanation below Section 18(1)(g) of the IBC is not applicable as the ownership of the goods was with the corporate debtor.

No approval under Tea Act vital for application under Section 9 of IBC

NCLAT has held that for filing application under Section 9 of the Insolvency and Bankruptcy Code against a Tea company under a management of different board, no permission of central govt. in terms of Section 16G(1) of the Tea Act, is required. Tribunal in the case of *A.J. Agrochems v. Duncan Industries* observed that Section 16G(1)relates to winding up whereas Section 9 of the IBC is for initiation of CIRP which aims atof corporate debtor by protecting it from its own management and from liquidation. Relying on Supreme Court judgement in the case of *Swiss Ribbons*, Tribunal observed that liquidation is not desirable under IBC.

Competition - Restrictions on sub-dealers when not anti-competitive

CCI has held that no case under Section 3(4)(c) of the Competition Act was made out against a mobile phone company for putting restriction on sub-dealers regarding online sale and selling phones outside demarcated region. Commission in *Karni Communications v. Haicheng Vivo Mobile* held that imposition of Resale Price Maintenance through Minimum Operation Price Policy not appeared to have caused appreciable adverse effect on competition. It observed that there is enough competition to discipline an enterprise from imposing restrictive conditions on downstream player.

The Competition Commission observed that informants had complete flexibility to move away from the agreement in case they do not wish to abide by the policy and there is plethora of mobile brands for business.

Section 18 of IBC is to prevail over Section 13(4) of SARFAESI Act

NCLAT has held that assets taken over from a corporate debtor by a Bank owing to bad debt,

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under the SARFAESI Act, are to be handed over to the Resolution professional. It was held that Section 18 of the IBC will prevail over Section 13(4) of the SARFAESI Act 2002. Appellate Tribunal in the case of *Encore Asset Reconstruction v. Charu Sandeep Desai* observed that as per Section 18, Interim Resolution Professional is to take control of assets owned by the corporate debtor including assets which may not be in possession of latter. It observed that title of assets was not transferred here.

NCLAT modifies resolution plan discriminating against operational creditor

NCLAT has allowed Resolution Applicant to modify the resolution plan approved by the Committee of Creditors (CoC), as the earlier plan was discriminatory with 27.83% of the distribution going to financial creditors and nil in favour of the operational creditor. The Appellate Tribunal in the case of *Mecamidi HPP India v. Rishi Ganga Power Corp.* held that the approved plan was in contravention of Section 30(2)(b) of the Insolvency and Bankruptcy Code. Relying on Judgements/Orders in the cases of *Binani Industries Ltd. v. BoB* and *Swiss India v. UoI*, the Tribunal observed that operational creditors are to be given roughly the same treatment as the financial creditors.

Contract workmen when not direct employees – Supreme Court lays down test

Supreme Court has held that a direct relationship between employer and workmen cannot be construed merely on issuance of gate passes by the former. Court observed that principal employer cannot be said to control and supervise work of employee merely because he directs workmen of the contractor 'what to do', and because it controls the contractor. Apex Court in the case of *BHEL v. Mahendra Prasad Jakhmola* observed that there was no appointment letter, provident fund number or wage slip, and that such labour was not performing duties identical as regular employees.

No penalty for non-payment of dividend if there exists a dispute

Bombay High Court has quashed the Session Judge Order of issue of process and summons under Section 127 of Companies Act. It observed that non-payment of dividend to the shareholder will not be an offence if payment is not made because of a dispute existing between the shareholder and the directors. Court in *Man Industries v. State of Maharashtra* held that where material placed before court clearly fulfils requirement of an exception, trial judge should have formed judgement that offence under Section 127 is not constituted. Judgement in *Mobilox Innovations v. Kirusa Software* was relied on.

NCLT can extend period for compliance of filing returns under Rule 153

NCLT has, under Rule 153 of NCLT Rules 2016, sufficient powers to extend time for filing of returns. Allowing appeal for restoration of name of company in the register, NCLAT directed filing of statutory returns within 30 days of order and observed that NCLT can further extend the time. Tribunal in *Raj Narain Singh v. ROC, Uttar Pradesh* observed that where there was litigation going on between parties and investigating auditor was involved and company petition was pending, it was wrong on part of ROC to have struck down name of the company u/s.248.

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OECD publishes Corporate Governance Factbook 2019

OECD recently published its Corporate Governance Factbook 2019 which is a compilation of information of 49 countries' institutional, legal and regulatory frameworks. According to the factbook, 41% of global market capitalisation is held by institutional investors, while public sector has ownership stakes in 20% of world's listed companies. Factbook, among other data, also contains information related to rights to obtain information on shareholder meetings, to request meetings and to place items on the agenda, and voting rights.

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NEW DELHI
5 Link Road, Jangpura Extension,
Opp. Jangpura Metro Station,
New Delhi 110014
Phone : +91-11-4129 9811

B-6/10, Safdarjung Enclave
New Delhi -110 029
Phone : +91-11-4129 9900
E-mail : lsdel@lakshmisri.com

MUMBAI
2nd floor, B&C Wing,
Cnergy IT Park, Appa Saheb Marathe Marg,
(Near Century Bazar)Prabhadevi,
Mumbai - 400025
Phone : +91-22-24392500
E-mail : lsbom@lakshmisri.com

CHENNAI
2, Wallace Garden, 2nd Street
Chennai - 600 006
Phone : +91-44-2833 4700
E-mail : lsmds@lakshmisri.com

BENGALURU
4th floor, World Trade Center
Brigade Gateway Campus
26/1, Dr. Rajkumar Road,
Malleswaram West, Bangalore-560 055.
Ph: +91(80) 49331800
Fax:+91(80) 49331899
E-mail : lsblr@lakshmisri.com

HYDERABAD
'Hastigiri', 5-9-163, Chapel Road
Opp. Methodist Church,
Nampally
Hyderabad - 500 001
Phone : +91-40-2323 4924
E-mail :lshyd@lakshmisri.com

AHMEDABAD
B-334, SAKAR-VII,
Nehru Bridge Corner, Ashram Road,
Ahmedabad - 380 009
Phone : +91-79-4001 4500
E-mail : lsahd@lakshmisri.com

PUNE
607-609, Nucleus, 1 Church Road,
Camp, Pune-411 001.
Phone : +91-20-6680 1900
E-mail :lspune@lakshmisri.com

KOLKATA
2nd Floor, Kanak Building
41, Chowringhee Road,
Kolkatta-700071
Phone : +91-33-4005 5570
E-mail : lskolkata@lakshmisri.com

CHANDIGARH
1st Floor, SCO No. 59,
Sector 26,
Chandigarh -160026
Phone : +91-172-4921700
E-mail :lschd@lakshmisri.com

GURGAON
OS2 & OS3, 5th floor,
Corporate Office Tower,
Ambience Island,
Sector 25-A,
Gurgaon-122001
phone: +91-0124 - 477 1300
Email: lsgurgaon@lakshmisri.com

ALLAHABAD
3/1A/3, (opposite Auto Sales),
Colvin Road, (Lohia Marg),
Allahabad -211001 (U.P.)
phone . +91-0532 - 2421037, 2420359
Email:lsallahabad@lakshmisri.com

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