



## Key Updates

### Recent Judgements

[An award directing transmission of share can be enforced through NCLT against a party which was not a party to the arbitral proceedings: SC](#)

A three-judge bench of Supreme Court, consisting of Chief Justice Dipak Misra, Justice A.M. Khanwilkar and Justice Dr. D.Y. Chandrachud, while deciding whether nominees of the Appellant Company can be bound by the Arbitration Award passed against them in the case of *Cheran Properties Limited v. Kasturi and Sons Limited and Ors*, [Civil Appeal Nos. 10025-10026 of 2017], held that an award directing transmission of share can be enforced through NCLT against a party which was not a party to the arbitral proceedings. In the said case wherein, the party is in question was the nominee company of the Respondent, KC Palanisamy, the Court while emphasizing on group of companies doctrine observed that it is essentially intended to facilitate the fulfilment of a mutually held intent between the parties, where the circumstances indicate that the intent was to bind both signatories and non-signatories. The effort is to find the true essence of business arrangement and to unravel from a layered structure of commercial arrangements, an intent to bind someone who is not formally a signatory but has assumed the obligation to be bound by the actions of signatory'.

[Mens Rea or Intentional Breach not an essential element for Levy of Penalty Under Sec. 43A of Competition Act: SC](#)

Supreme Court while delivering a Judgement, in *Competition Commission of India vs. Thomas Cook (India) Ltd.*, observed that the mens rea is an essential element in case of criminal and quasi-criminal liability. Whereas, for imposing penalty in case of a breach of the statutory provision of the civil law, the action may not be mala fide. The apex court while dealing with the factual contentions of the case, also dealt with one of the contentions that for making a company liable under Section 43A of the Competition Act and imposing penalty there is not any requirement of mens rea or intentional breach on the part of the accused company. The bench said, "Section 43A of the Act does not use the expression, "the failure has to be willful or mala fide" for the purpose of imposing the penalty under the said section.



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# Policy Updates

## SEBI specifies uniform structure for imposing fines

SEBI vide circular no. SEBI/HO/CFD/CMD/CIR/P/2018/77 dated 03.05.2018, to streamline the process, to maintain consistency and to adopt a uniform approach in the matter of levy of fines for non-compliance with certain provisions of the Listing Regulations, the manner of suspension of trading of securities of a listed entity and the manner of freezing the holdings of the promoter and promoter group of a non-compliant listed entity, listed out the actions which the stock exchange shall take in case of non-compliances with the Listing Regulation in Annexure I of the Circular. Further, it also listed out the Standard Operating Procedure (SOP) for suspension and revocation of trading of specified securities in Annexure II of the Circular, which the stock exchanges shall follow having regard to the interests of investors and the securities market. The aforesaid Circular shall come into force with effect from compliance periods ending on or after September 30, 2018.

## Companies (Share Capital and Debentures) Amendment Rules, 2018

The Department of Ministry of Corporate Affairs vide Notification [G.S.R. 363(E)] dated 10.04.2018 has amended the Companies (Share Capital and Debentures) Rules, 2014. The said Notification substitutes Rule 5, sub-rule (3). According to the said amendment, every certificate shall specify the shares to which it relates and the amount paid up thereon and shall be signed by two directors or by a director and the company secretary, wherever the company has appointed a company secretary. Provided that, in case the company has a common seal it shall be affixed in the presence of persons required to sign the certificate. The Notification further clarified that wherein it states that in case of One Person Company it shall be sufficient if the certificate is signed by a director and the company secretary or other person authorised by the Board for the purpose and a director shall be deemed to have signed the share certificate if his signature is printed thereon as facsimile signature by means of any machine or equipment but not by means of rubber stamp provided that the director is personally responsible for permitting the affixation of his signature and safe custody of the respective material used for the purpose.



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