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Some important changes happened in the Corporate and Legal world in the month of October, 2020:

1. Relaxation in fulfilling the Residency Requirement by the Directors of 182 days under Section 149(3).

- Ministry of Corporate Affairs (MCA) vide General Circular dated 20th October, 2020 has provided relaxation from in fulfilling the Residency Requirement by the Directors of 182 days under Section 149 due to COVID-19 outbreak.
- Section 149(3) states that every company shall have at least one director who stays in India for a total period of not less than one hundred and eighty-two days during the financial year.
- Relaxation has been provided and it is clarified that Non-Compliance of minimum residency in India of atleast 182 days in a year, by atleast one director in every company shall be treated as Compliance for the financial year 2020-21.
- This Relaxation is applicable to Companies Incorporated under Companies Act, 2013 and Limited Liability Partnership Act, 2008.

Impact: MCA has provided relaxation from the compliance of Minimum residency in India for a period of atleast 182 days in a year by the directors of a company for financial year 2020-21.

2. Amendments in the Companies (Prospectus and Allotment of Securities) Rules, 2014.

- Ministry of Corporate Affairs vide notification dated 16th October, 2020 has further amended the Companies (Prospectus and Allotment of Securities) Rules, 2014. These rules may be called the Companies (Prospectus and Allotment of Securities) Amendment Rules, 2020 which shall come into force on the date of their publication in Official Gazette.
- In Rule 14 sub-rule (1), which relates to Private Placement of shares which requires explanatory statement to be annexed to the Notice for passing special resolution, after the third proviso the following shall be inserted:

“Provided also that in case of offer or invitation of any securities to Qualified Institutional Buyers, it shall be sufficient if the company passes a previous special resolution only once in a year for all the allotments to such buyer during the year.”

Impact: It simply means that the company can pass one Special Resolution for the entire year for all the allotments to such Qualified Institutional Buyers. This amendment will

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save a lot of time, cost and energy from various compliances, thus being a benefit for companies and stakeholders.

3. Case Study on Inheritance of Shares - Aruna Oswal (Appellant) vs. Pankaj Oswal & Ors. (Respondents).

➤ Facts of the Case:

The brief facts of the case are that Late Mr. Abhey Kumar Oswal, during his lifetime, held as many as 53,53,960 shares in M/s. Oswal Agro Mills Ltd., a listed company. He died on 29th March, 2016. Mr. Abhey Kumar Oswal filed a nomination according to section 72 of the Companies Act, 2013 in favour of Mrs. Aruna Oswal, his wife. Two witnesses duly attested the nomination in the prescribed manner. The name of Mrs. Aruna Oswal, was registered as a holder on 16th April, 2016 as against the shares held by her deceased husband.

Pankaj Oswal, son of late Abhey Oswal filed a partition suit in High Court claiming entitlement to one-fourth of the estate of his father including the deceased's shareholdings. The High Court passed an interim order to maintain status quo concerning shares and other immovable property.

While the suit was pending Pankaj Oswal also moved the NCLT, Chandigarh alleging oppression and mis-management under Section 241/242 of the Companies Act, 2013 in the affairs of respondent no. 2 (the company). Mrs. Aruna Oswal challenged the maintainability of the petition. The NCLT directed filing of reply to the petition, without deciding the question of maintainability.

This was challenged before NCLAT, which in turn directed the NCLT to decide the question of maintainability of the petition. The NCLT thereafter dismissed the challenge to maintainability and held that Pankaj Oswal, being a legal heir, was entitled to one-fourth of the property/shares. Therefore, the matter eventually reached the Supreme Court of India.

➤ Judgement:

Supreme Court observed that the basis of the petition is the claim by way of inheritance of one-fourth shareholding so as to constitute 10% of the holding. This is the right, which cannot be decided in proceedings under Section 241/242 of the Companies Act, 2013. Thus, filing of the petition under sections 241 and 242 seeking waiver is a misconceived exercise as Pankaj Oswal has to firmly establish his right of inheritance before a civil court to the extent of the shares he is claiming in view of the nomination made as per the provisions contained in Section 71 of the Companies Act, 2013. In order to maintain the proceedings, Pankaj Oswal others should have



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waited for the decision of the right title and interest, in the civil suit concerning shares in question.

The orders passed by the NCLT as well as NCLAT are set aside, and the appeals are allowed.

➤ **Conclusion:**

Dispute of Inheritance of Shares is a civil dispute; it cannot be decided under section 241/242 of the Companies Act, 2013.

4. Case Study on Repayment of Deposits Accepted - M/s Ind-Swift Limited (Appellant) vs. Registrar of Companies (Respondent).

➤ **Facts of the Case:**

M/s Ind-Swift Limited is a public limited company, it had accepted deposits since 2002 and regularly paid back till 28th February, 2013. In 2013, it started facing liquidity problems and incurred losses.

M/s. Ind-Swift Limited filed application before Company Law Board and obtained relief under Section 58AA (Acceptance of Small Deposits) read with Section 58A(9) (Failure to repay deposits) of the erstwhile Companies Act, 1956 and got instalments fixed to repay deposits. M/s. Ind-Swift Limited for a second time sought re-fixing of periods, instalments and rate of interest from NCLT, New Delhi bench under Section 74 of the Companies Act, 2013. NCLT rejected the application. This appeal is against rejection of the application/s.

➤ **Judgement:**

The NCLAT observed that the NCLT considered that the appellant had at the first grant of time got relief of huge extension and that there was no reason to accept the plea for further extension. The NCLT appears to have found that when big relief had already been granted to the company, further extension was not justified.

Section 76(2) read with Sections 73 and 74 of Companies Act, 2013 would apply to acceptance of deposits from public by eligible companies but it saves the company which had accepted or invited public deposits under the relevant provisions of erstwhile Companies Act, 1956 and Rules there under and has been repaying such deposits and interests thereon in accordance with such provisions, then the provisions of Clause (b) of Sub-Section (1) of Section 74 of the Companies Act, 2013 shall be deemed to have been complied with. This is, however, subject to the fact that the company complies with the requirements under the Act and the Rules and

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“continues to repay such deposits and interest due thereon on due dates for the remaining period” as per the terms and conditions.

It appears that Section 74(1)(b) of the Companies Act, 2013 was attracted which states that any deposit accepted by a company before the commencement of Companies Act, 2013 the amount of which including interest (if any) is unpaid or remains due at any time after commencement of Companies Act, 2013 then the company shall repay within three years from such commencement or on or before expiry of the period for which the deposits were accepted, whichever is earlier.

Considering these provisions, it appears from record that M/s. Ind-Swift Limited has defaulted in payment.

➤ **Conclusion:**

When once a scheme had got settled from Company Law Board, default on the part of M/s. Ind-Swift Limited would attract penal provisions as the earlier scheme itself laid down. Hence, present appeal for further extension is dismissed.

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We suggest readers to draw their conclusions after taking into consideration various other relevant sections, rules to be notified from time to time and applicable Secretarial Standards, Accounting Standards and Guidance notes and other notifications, circulars and amendments notified from time to time.

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